

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff)
vs.) CRIMINAL CASE NO. CCB-21-0334
WILSON NUYILA TITA, et al.,) VOLUME V
Defendants.)
_____)

Friday, April 29, 2022
Courtroom 7D
Baltimore, Maryland

JURY TRIAL

BEFORE: THE HONORABLE CATHERINE C. BLAKE, Judge

For the Plaintiff:

Kathleen Gavin, Esquire
Judson Mihok, Esquire
Assistant United States Attorneys

For the Defendants:

For Wilson Nuyila Tita:
David Benowitz, Esquire

For Eric Fru Nji:
Richard Basile, Esquire

For Wilson Che Fonguh:
Glenn Ivey, Esquire

Also Present:

Special Agent Jen Marks, ATF
Special Agent Tonya Matney, HSI
Damon Gasque, Paralegal

Reported by:

Nadine M. Bachmann, RMR, CRR
Federal Official Court Reporter
101 W. Lombard Street, 4th Floor
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1 (10:23 a.m.)

2 THE COURT: Good morning, everyone. Are we ready for
3 the jury?

4 MS. GAVIN: Yes, ma'am.

5 THE COURT: We can bring in the jury and call the
6 witness.

7 (Jury entered the courtroom at 10:23 a.m.)

8 THE COURT: Good morning, everyone.

9 A JUROR: Good morning.

10 THE COURT: Welcome back and you can all be seated.
11 Let's see, Ms. Gavin, will the Government be calling another
12 witness?

13 MS. GAVIN: Yes, Your Honor. Before that the
14 Government would like to offer a stipulation. It's been marked
15 as Government's Exhibit 79 and the stipulation is regarding
16 telephone records.

17 It is agreed and stipulated between the parties that
18 at all relevant times the following phone numbers were used by
19 the following individuals. And the stipulation has a list of
20 individuals and phone numbers and the last names just for the
21 record, are Akem, Bangarie, Fonguh, Mancho, Muma, Ngang, Niba,
22 Nji, St. Michael, Tita. And I would offer that into evidence.

23 THE COURT: Thank you very much. That's admitted.

24 MS. GAVIN: And now the Government calls Alambi
25 Walters Muma.

1 **THE CLERK:** Please raise your right hand.

2 **(Witness, sworn.)**

3 **THE CLERK:** Please be seated. Please speak directly
4 into the microphone, state and spell your full name for the
5 record, please.

6 **THE WITNESS:** My full name is Alambi Walter Muma.

7 **THE CLERK:** Spell your name, please.

8 **THE WITNESS:** Alambi is spelled A as in apple, L as
9 in lady, A as in apple, M as in man, B as in boy, I as in
10 Isaac. Walter is spelled W as in wall, A as in apple, L as in
11 lady, T as in Tom, E as in early and R as in ready. Muma is
12 spelled M as in man, U as in umbrella, M as in man, A as in
13 apple.

14 **THE CLERK:** Thank you.

15 **D I R E C T E X A M I N A T I O N**

16 **BY MS. GAVIN:**

17 Q. Good morning, Mr. Muma.

18 A. Good morning.

19 Q. Could you indicate where you were born, sir?

20 A. Yeah, I was born -- I was born in Mankon.

21 Q. What country is that in?

22 A. Southern Cameroons.

23 Q. And what is your educational background?

24 A. High school.

25 Q. Was that high school in Cameroon?

1 A. Yes, ma'am.

2 Q. When did you come to the United States?

3 A. I came to the United States sometime in 2004.

4 **THE COURT:** If you could really keep your voice up,
5 please, and speak right into the mic. Thank you.

6 **BY MS. GAVIN:**

7 Q. And are you now a U.S. citizen?

8 A. Yes, ma'am. I'm a U.S. citizen.

9 Q. When did you become a citizen?

10 A. Sometime in I think 2010.

11 Q. And where do you currently live? Not the address, just
12 where do you live, what town?

13 A. I live in Tacoma Park, Maryland.

14 Q. How long have you lived in Tacoma Park, Maryland?

15 A. About five years.

16 Q. What is your current employment?

17 A. I'm a PCA, personal caregiver.

18 Q. What does that mean, a personal caregiver, home nurse?

19 A. Yeah.

20 Q. Now have you appeared in this courthouse before?

21 A. Yes, sometime on the first of July I think, last year.

22 Q. And what was the purpose of your appearance in this
23 courthouse?

24 A. I was charged with conspiracy of shipping weapons
25 overseas.

1 Q. And did you -- were you represented by an attorney at
2 that point?

3 A. Yes, ma'am.

4 Q. Did you enter a plea?

5 A. Yes, ma'am.

6 Q. What was your plea?

7 A. My plea is to --

8 Q. Did you plead guilty or not guilty?

9 A. I pled guilty.

10 Q. And are you still represented by a lawyer?

11 A. Yes.

12 Q. And did you appear before -- do you recall the judge you
13 appeared before?

14 A. I can't recall, but it was a male judge.

15 Q. And are you appearing here today pursuant to any sort of
16 agreement with the Government? Do you have an agreement with
17 the Government?

18 A. Um, yes.

19 Q. And what is that agreement?

20 A. The agreement is to speak the truth, state the fact what
21 happened, what we did.

22 Q. And if you do that, what do you expect to happen?

23 A. It's just to speak the truth, state the facts.

24 Q. Have you been sentenced yet?

25 A. No, ma'am.

1 Q. Do you know who will sentence you?

2 A. I guess it's Her Honor that is sitting next --

3 Q. You're pointing to the judge in the courtroom now. So
4 your understanding is that Judge Blake will sentence you; is
5 that correct?

6 A. Yeah, I didn't get her name until now.

7 Q. Have any promises been made to you as to what kind of
8 sentence you will get?

9 A. No, ma'am.

10 Q. Do you have any expectation of a particular sentence or
11 not?

12 A. No.

13 Q. Now directing your attention now to late 2017/2018, did
14 you become involved in the preparation and shipping of
15 firearms and other items to go overseas?

16 A. You have to understand this -- this is a difficult moment
17 for me just to -- to testify against my friends. It's hard for
18 me to do this because what we did, we did that because we
19 wanted help for our people. So it's hard for me to testify
20 against them, but I'm just going to state the facts as it is
21 what we did.

22 Q. Did you become involved in the preparation and shipping
23 of ammunition and firearms to go overseas?

24 A. Yes, ma'am.

25 Q. And is that the conspiracy that you have entered a plea

1 of guilty to?

2 A. Yes, ma'am.

3 Q. Do you know Wilson Tita?

4 A. Yes, ma'am.

5 Q. How do you know Mr. Tita?

6 A. I met him sometime in 20 -- 2017, just during the course
7 of this, our struggle.

8 Q. Was he a member of the conspiracy that you joined?

9 A. Yes, ma'am.

10 Q. Do you know Eric Fru Nji?

11 A. Yes, ma'am.

12 Q. And how do you know him?

13 A. I also met him sometime around 2017.

14 Q. Was he a member of the conspiracy that you pled guilty
15 to?

16 A. Yes, ma'am.

17 Q. Do you know Wilson Fonguh?

18 A. Yes, ma'am.

19 Q. And how do you know Mr. Fonguh?

20 A. Same, around the time 2017.

21 Q. Was he a member of the conspiracy that you pled guilty
22 to?

23 A. Yes, ma'am.

24 Q. Now the plan -- you say you got involved in the
25 preparation and shipping of items. Was there a name for that

1 plan? Did you all give it a name?

2 A. Yeah. When we got together we had this name for this
3 group called -- the name was Kindness. The group was called
4 Kindness.

5 Q. And have you ever heard the name the Peanut Project?

6 A. Yes, ma'am.

7 Q. What's the Peanut Project?

8 A. The Peanut Project is a project whereby we put together
9 ammunitions and send them to our brothers back in the home
10 front defending our people.

11 Q. What did you do in the group? What was your role in this
12 group of people who were sending things, the ammunition and
13 other things overseas?

14 A. Yeah, my role, my role was I was participating in putting
15 the firearms together, packaging them and then also I was
16 involved in also filing the serial numbers, taking of the
17 serial numbers through using a -- using -- how do you call it?

18 Q. A machine?

19 A. Yeah, filing machine.

20 Q. So we're going to get to the machine and the filing of
21 the serial numbers in a second, but let me ask, did you attend
22 meetings in connection with this work with the shipping and
23 planning to ship things overseas?

24 A. Yeah. We -- at times we used to have Zoom meetings. At
25 times we had just regular phone, yeah, phone meetings.

1 Q. And did you occasionally meet in a basement on Golden
2 Ring Road?

3 A. Yes.

4 Q. What was that basement called?

5 A. The basement, the name for the basement was called a lab.

6 Q. Did you donate money or give money towards the purchase
7 of weapons and other items to be shipped?

8 A. Yes, ma'am.

9 Q. And did you deliver consignments?

10 A. Yes, ma'am.

11 Q. What's a consignment?

12 A. A consignment is a tank, a compressor tank whereby we cut
13 the top of it, load it with ammunitions and weapons and then
14 conceal it back.

15 Q. How did you get to the basement and the meetings when you
16 would go to them in person?

17 A. I would say 8 out of 10 times I would ride with Fru and
18 Fonguh.

19 Q. And when you say "Fru," you mean Fru Nji?

20 A. Yeah, we would ride together.

21 Q. And you had mentioned the serial numbers, that you were
22 filing the serial numbers. What was the purpose of using this
23 grinding machine on the guns?

24 A. The purpose of using the machine to file the serial
25 numbers was not for -- either the terrorists, Government of

1 Cameroon to keep track of the weapon or the U.S. Government.
2 Because when the war started, when the war started, I remember
3 one of the first consignment that St. Mike sent, one of the
4 weapons, one of the soldiers fall with the weapon on the
5 battlefield. So they picked up the weapon and then they traced
6 the serial number. So that's when Mike said he assigned me to
7 the filing, to hide, to hide the -- in such a way that you
8 cannot track the weapon in case it is being taken from one of
9 the soldiers in the field.

10 Q. Okay. And did anyone else perform that function in
11 addition to you in terms of grinding off the serial number?

12 A. Well, I don't know because we used to go over there in --
13 on different occasions. When I'm off work, when I have chance,
14 okay. Then for some reason if Fru is off and Fonguh is off,
15 we team up together and ride over there.

16 Q. When Mr. St. Michael told you or assigned you the job of
17 grinding off the serial numbers, was anyone else there? Who
18 was part of that conversation?

19 A. Not, not like listening. We used to be in a team,
20 somebody is maybe doing packing things, somebody is reloading.
21 And then here just you do this, you do that. He would just
22 assign us.

23 Q. Do you recall indicating previously that there were other
24 individuals there who also were told to help with that job at
25 times?

1 A. Yeah.

2 Q. Who were the others that were told to help with that job
3 at times?

4 A. With the filing?

5 Q. Yes.

6 A. For some reason I was the one that was in charge of the
7 filing. Other -- maybe at times Fru would be taking
8 inventories of what we've put together and then Fonguh maybe
9 would be doing some type of loading and reloading.

10 Q. So are you saying that when you were told to do the
11 serial number filing, are you indicating in your answer that
12 Mr. Fru and Mr. Fonguh were aware that you were told --

13 **MR. IVEY:** Objection, Your Honor.

14 **MR. BENOWITZ:** Objection.

15 **MR. IVEY:** Objection.

16 **THE COURT:** Rephrase, please.

17 **BY MS. GAVIN:**

18 Q. Were they there when you were told to perform this
19 function by Mr. St. Michael?

20 A. Yes, ma'am. It's in a small space, a very small space
21 like about three, three meter square.

22 Q. Okay. Now when you would file off the serial numbers, you
23 indicated you would use a machine?

24 A. A grinder.

25 Q. A grinder, okay. Would you wear any type of special

1 equipment for that?

2 A. I would put on gloves because we had special gloves and I
3 would put on goggles.

4 Q. And if we could pull up Government's Exhibit 25H, please.
5 And while that's being pulled up let me ask you, did you have
6 any particular location in the lab where you would do the
7 grinding off of the serial numbers?

8 A. Yeah.

9 Q. And when you would do this grinding of the serial
10 numbers, I think you indicated that others were present often
11 in the lab with you; is that right?

12 A. Yeah.

13 Q. What was the process like in terms of the grinding off of
14 the serial numbers? You said you wore gloves and goggles.
15 Why was that?

16 A. I wore gloves and goggles to prevent -- to protect my
17 eyes and also to protect my hands. During the course of doing
18 it, something might happen that I would get hurt.

19 Q. Would it make a mess? The process, was there dust or
20 that's why -- you said protect your eyes. Were things flying?

21 A. Yeah, because you're filing on iron, so you don't know --

22 Q. Okay. Did the machine that you use make any noise?

23 A. Yeah, the grinder when you use it it makes noise.

24 Q. What did it sound like?

25 A. Like a lot of handymen when they use a grinder like

1 cheeeeeeeeeeee.

2 Q. Was it loud?

3 A. Kind of.

4 Q. Take a look if you could, please, at Government's Exhibit
5 25H. And do you recognize that picture?

6 A. Yeah.

7 Q. What is it?

8 A. This picture is in the lab. It's an unfinished toilet in
9 the lab.

10 Q. And the dark things on the left that appear stacked, what
11 are those?

12 A. Tires.

13 Q. And on the back of the toilet, what is that? Besides the
14 bottle of water, what is that other item?

15 A. That's a grinder sitting on top of the --

16 Q. Is that the machine you were just referring to?

17 A. Yeah, the grinder, right.

18 Q. And where -- did the tires play any role in your grinding
19 of the serial numbers, grinding them off?

20 A. These tires, I use them like a table, like a table to sit
21 the guns on and then file.

22 Q. About how long would it take you to file off the serial
23 numbers on a particular gun?

24 A. It might take me up to five minutes.

25 Q. Now when you were in this -- at the tires grinding off a

1 serial number, were you visible to -- I mean, could you see
2 the people in the other parts of the basement?

3 A. Of course.

4 Q. And the grinder that you mentioned making noise, could
5 that noise -- did that go throughout the basement as far as
6 you could tell?

7 A. It can go out, but we are in the basement. If we're in
8 maybe like on top of the stairs on the house, the next
9 neighbor could hear.

10 Q. But what I'm asking more is could it be --

11 A. The noise levels was only in the basement.

12 Q. Okay. Now you mentioned Mr. Nji that you would ride along
13 with him and Mr. Fonguh to the lab 8 times out of 10. What did
14 Mr. Nji do when he came to the lab with you? What was his
15 job?

16 A. Yeah, when we come, when we come to the lab, at times he
17 would help out in packaging. We call them ground nuts,
18 peanuts. He would help in packaging and then also help in
19 reloading at times. We just -- we just work as a team, yeah.

20 Q. So did you also sometimes do the packaging and the
21 reloading of ammunition?

22 A. Yes, ma'am.

23 Q. I'm going to show you what's been marked as Government's
24 Exhibit 32M. And do you recognize anyone in that picture?

25 A. Yeah, I do recognize --

1 Q. Who is the person, if you recognize him, holding the
2 notebook and the pen?

3 A. That's my friend, Mr. Nji.

4 Q. And who is in the middle?

5 A. My friend, Mr. Wilson Fonguh.

6 Q. And who is that on the other side of Mr. Fonguh?

7 A. And that's Bangarie.

8 Q. And where is this picture taken?

9 A. This picture is taken in the lab, it's a lab.

10 Q. What is it that Mr. Fonguh and Mr. Bangarie are sitting
11 on?

12 A. This is already processed peanuts, peanuts.

13 Q. And Mr. Nji is holding a pad. Do you know why he had a
14 pad at that point?

15 A. Yeah. When we were putting these things together to help
16 our people, Mike decided that it's good we take inventory,
17 take -- make sure how many, the amount of ammunitions and the
18 guns just to keep stock of the things that we are shipping out
19 to protect our people down in Southern Cameroons.

20 Q. So the pad, are you saying that Mr. Nji was taking notes
21 of the inventory of the things that you just mentioned?

22 A. Yeah.

23 Q. Now Mr. Fonguh, what did he do when he would come to the
24 lab with you?

25 A. Mr. Fonguh, he will always, like, do like I said, do the

1 loading. He would do the loading and also have a package,
2 package stuff, repackage things.

3 Q. And how about Mr. Tita, did he come to the basement, to
4 the lab?

5 A. Yeah, he would come often and when he comes he just,
6 like, he would see what we are doing and then he would, like,
7 "Oh, we need to put this this way, we need to put this this
8 way." He doesn't usually work, do the hard work all the time.

9 Q. He wasn't doing the actual physical stuff, but was giving
10 instructions?

11 **MR. BENOWITZ:** Objection, leading.

12 **THE COURT:** Sustained.

13 **BY MS. GAVIN:**

14 Q. Was Mr. Tita giving instructions?

15 A. Yeah.

16 Q. I'd like to show you if we can take a look at what's
17 Government's Exhibit 36A. Now do you recognize that as an
18 extraction report of a particular WhatsApp group?

19 A. Is there a way that I could maybe magnify it?

20 Q. Sure.

21 A. Yeah, that's better.

22 Q. Moving to the fifth person or the entry down, did you go
23 see Walters Mankon Bro with a phone number of 301 --

24 A. Yeah, that's me.

25 Q. That's you?

1 A. Yeah.

2 Q. And do you recall this WhatsApp group chat?

3 A. Yeah.

4 Q. I'm going to show you what's been marked as Government
5 Exhibit 36B. And actually, I'm sorry, the 36A that we just
6 looked at, the second page, the first date up at the top. Do
7 you see in the blue box the first entry down at the bottom is
8 dated 10/7/2018 and it's a message from Mancho Godlove saying:
9 "Meeting time people. Hope you are all on your way." Do you
10 recall what the meeting was about?

11 A. Yes.

12 Q. What was it?

13 A. We always like -- this particular -- this particular
14 event we had a meeting at the Mancho's residence, yeah, I
15 remember. I'm not good at dates too, but I remember it
16 happening.

17 Q. That's fine.

18 A. We had a meeting.

19 Q. The next entry, the green box is from, it says, "from the
20 Ghost 2 PM." And who was the Ghost?

21 A. The Ghost is St. Mike.

22 Q. So this part of the group, the conspiracy group that you
23 have pled guilty to, was the Ghost and Mancho Godlove, were
24 they part of that?

25 A. Yes, ma'am.

1 Q. Now if we could look at Government's Exhibit 36B, please.
2 Up at the top, the first three entries, if you could highlight
3 those, please, thank you. The first entry that is from Walters
4 Mankon Bro dated October 11, 2018 says "Ma Ngang this is so so
5 wrong." And then the next entry again from Walters Mankon
6 Bro, same date says "This woman Ma witch woman." And then the
7 next entry, same date from Fru Nji says, "It has been removed
8 from Facebook. We need to start deleting from WhatsApp." Can
9 you explain what you were talking about there?

10 A. Yeah, this -- in this scenario there was some incident
11 that happened in the lab because when we started this project
12 to put together this ammunitions and ship to our people to
13 defend themselves, we were kind of like doing it in secret.
14 Even when we came together at first, those of us that came
15 together, all of us that came together we decided that what we
16 are doing, it should stay in between us.

17 Q. Why is that?

18 A. Because we didn't want the public to know.

19 Q. Why not?

20 A. Because to some extent we understand that if they know,
21 they're going to stop us and it's illegal.

22 Q. And who is "they"? "They" are going to stop you?

23 A. They, the authorities.

24 Q. And what authorities?

25 A. The American authorities or either the Cameroon

1 authorities.

2 Q. So it was both, both authorities you're saying?

3 A. Yeah, so we decided to keep it as a secret.

4 Q. Okay.

5 A. But unfortunately, the only lady that was among us, this
6 Ngang, we don't know what happened because like I said, we
7 used to come in the lab on different occasions. Maybe she came
8 there during our absence. Because it might be -- it was
9 Mike's residence, so maybe she came in our absence and then
10 got there with Mike. We just saw a video coming out of the
11 lab. The video was taken from the lab where she held a very
12 large -- a very large drum. I remember Ngang is doing
13 something. She was portraying and saying -- "Oh, Mr. Paul
14 Biye, the terrorist of Cameroon. We are going after you." So
15 in the video that like I was saying "Oh, Mr. Paul Biye, we are
16 coming for you. You've killed our people enough." So when we
17 saw this video out -- because it went -- the video went viral.
18 We're like what? How did she get in the lab with her phone to
19 even come out with the video? So then this, that's why we
20 started like commenting on this chat. That's when I said this
21 woman, this Ma Ngang is, yeah, I said this Ma Ngang is so, so
22 wrong.

23 Q. Do you recall what happened as a result of that, the
24 posting of the video, what happened with Ma Ngang?

25 A. Well, when this video went viral, I think we didn't

1 have -- we didn't have a physical meeting, we had maybe some
2 kind of a phone call. And then we came to a consensus that we
3 should kick her out of -- we should suspend her out of the
4 group for a time being. And then also we tried to do damage
5 control because the thing was already out there in the social
6 media. So we were trying to do damage control and then also
7 see how to discipline her within the group.

8 Q. And when you say "we," do you include in that "we" when
9 you're talking about a consensus and what you're deciding to
10 do, do you include Mr. Tita in that description of "we"?

11 A. Tita, Nji, Fonguh, yeah. All of us that were in the
12 group.

13 Q. Okay, if we could turn now to Government's Exhibit 36C.
14 Actually, I'm so sorry. Could we go back to 36B? On the
15 second page, the second one from the bottom of 36B, if you
16 could highlight that entry. This is an entry dated October 26,
17 2018 from Fru Nji that says, "Good morning comrades. Please
18 just a reminder that our Farm Project is getting to the
19 completion stage. We need more hands to push it through. Let
20 us all try to answer present this weekend. Those who have time
21 on Sunday should try and go do some work. I will be there on
22 Sunday from 2 p.m. Please indicate your availability, thanks."

23 Now in this message, what did you understand the
24 reference to Farm Project to mean?

25 A. The Farm Project, because what we were doing, most -- we

1 use coded language in our operations. So the farm tools, what
2 we referred to farm tools were like the ground nuts, the guns,
3 yeah.

4 Q. And the Farm Project, was that sort of the whole project?

5 A. Yeah.

6 Q. Now if we could go to Government's Exhibit 36C, thank
7 you. And up at the top, please, the blue box there is dated
8 November 14, 2018 from Fru Nji and it says, "In addition, we
9 urgently need scope on one of our deadliest stick. Few members
10 have made pledges which stands at \$1,800. The scope ranges
11 between \$2,300 and \$2,500. Please let come through with our
12 contributions. We all know the challenges are huge, but we are
13 up to it. God bless Ambazonia."

14 What did you understand this message to mean?

15 A. This message, the guns, the guns that we were sending
16 down to our people to defend themselves, those guns, they
17 were, like, doing the job, but for some of them it was not
18 doing, there was -- the job was not really, like, really
19 defending our people. So we decided to get -- I'm sorry, I'm
20 not a military man, but I don't know how to call the names of
21 -- we decided to get a bigger weapon.

22 Q. So "deadliest stick," is that referring to a bigger
23 weapon?

24 A. Yeah, that bigger weapon we needed a scope, because Mike
25 was a professional. He knows how to use the terminologies

1 about these things. So he said, he said that biggest weapon
2 would need something that you can spot the enemy from a
3 distance before they even approach our people to kill them.
4 Then we can take them out from a distance.

5 Q. Now also on that page just below that in the green box
6 dated November 17, 2018 is a message from the Ghost that among
7 other things says that "one of our current projects
8 successfully made it to Ground Zero." And what did you
9 understand that sentence to mean?

10 A. Let me read. What Mike is saying here is that one of our
11 shipments, one of our shipments got -- one of our shipments
12 arrived at our destination safely in the hands of our boys
13 that are there to defend our people from French Cameroon
14 terrorists.

15 Q. And so Ground Zero, what did that mean?

16 A. Ground Zero is the code name for -- the code name for our
17 land.

18 Q. In Southern Cameroons?

19 A. Yes.

20 Q. And down below that message -- actually, that's okay.
21 Turning to the next page, please, of that exhibit, I'm sorry.
22 Turning now to Government's Exhibit 36D, please. And do you
23 recognize this as another portion of that WhatsApp chat group
24 that we've been talking about?

25 A. Yeah. Can you like enlarge --

1 Q. We've been looking at pages from the WhatsApp chat group.
2 I was just asking, is this part of the same WhatsApp chat
3 group dated -- this one is dated November 18th and 19th of
4 2018. You've seen this before?

5 A. Yeah, can you just enlarge it? Because I'm suffering
6 from diabetes so my eyes have gone.

7 Q. At the top the message dated November 18, 2018 is a
8 message from the Ghost in which he mentions money that people
9 have donated or pledged. And he states, "We have a lot of
10 work and finance needed for the effective and efficient
11 completion of our project." And also further down it says,
12 "Also manpower is needed for completion of work even if it's
13 two hours."

14 Below that message in blue is a message dated the
15 following day from Fru Nji that says, "Great job, comrades.
16 God bless you all."

17 And then turning to the next page, the second entry
18 is a message from Fru Nji dated 11/19/2018 that says, "Good
19 morning comrades. This week was like a rest week for me and
20 Fonguh. We needed some time off to reenergize. We have been
21 going to the lab at least every week, sometimes three days per
22 week since we started the project, but some of our members
23 have forgotten the road to the lab. Please let's redouble our
24 efforts especially since we are at the conclusion stage. Let's
25 plan to be there on Saturday and Sunday to push the remaining

1 work. Thank you to comrades who have been working, especially
2 St. Mike. His sacrifice is unmeasured and the only way to
3 appreciate him is to show up and support the work. Thank you
4 all and let me know if my ride sharing team is ready this
5 Sunday."

6 And what did you understand the "ride sharing team"
7 to refer to?

8 A. Yeah, the ride sharing team is referred to I, Fonguh and
9 him. We used to like I said, 8 out of 10 times we arrived
10 together because there's no need for me to be driving my own
11 car. Fonguh was driving his own car, we'd get into a single
12 car because it was easier for us to drive in a single car and
13 then could get the work done.

14 Q. Now at this time in mid-November of 2018, what was almost
15 at the conclusion stage that Mr. Nji refers to or what did you
16 understand him to mean when he says "we are at the conclusion
17 stage"?

18 A. The conclusion stage is we were putting up -- we were
19 putting up a consignment. We were putting up a consignment to
20 send down to Ground Zero because we were -- these people, they
21 were like -- these French Cameroon terrorists they were like--

22 Q. I just wanted to ask you what the conclusion stage was.

23 A. To conclude the consignment, to finish up packaging
24 everything and then keep them rolling.

25 Q. And let's take a look at Government's Exhibit 20A. And do

1 you recognize that picture?

2 A. Yes.

3 Q. And what is it?

4 A. It's a container.

5 Q. Okay. And does this container relate to the project that
6 you were just talking about that was nearing the completion
7 stage? Is that what you meant when you referred to
8 consignment, that consignment?

9 A. Yeah.

10 Q. Okay. Now this container, did you participate in loading
11 it with ammunition and wrapped packages, all the wrapped items
12 that you've been talking about?

13 A. Yes, ma'am.

14 Q. Who else helped load the container?

15 A. Because the first day -- I think the first day I wasn't
16 there, but the second day -- because when I came the second
17 day, the container was almost like half loaded. So the day
18 that we came --

19 Q. Who is "we"?

20 A. I, Fru and Fonguh.

21 Q. Okay.

22 A. We rode in the same car. We came -- Rogers was there.
23 Tita was there. Mike was there. And then there was -- there
24 was -- there was some other guy that maybe brought a car, a
25 truck to put -- I can't remember his name, though. But he

1 brought a truck too.

2 Q. And the day that you were there --

3 A. To put in the container.

4 Q. I'm sorry. And the day that you were there, did you load
5 any of the compressors or the wrapped up packages?

6 A. Yes, I did.

7 Q. And did Mr. Fonguh and Mr. Nji also put those types of
8 items or help put those items in the container?

9 A. Yeah, all of us participated.

10 Q. And what did Mr. Tita do?

11 A. He has -- usually he doesn't want to get his hands dirty,
12 but --

13 Q. Okay.

14 A. He was like seeing what was going on, put this there, put
15 this there.

16 Q. Did Mr. Tita give instructions about how to load the
17 container?

18 **MR. BENOWITZ:** Objection, leading.

19 **THE COURT:** Sustained. Rephrase.

20 **BY MS. GAVIN:**

21 Q. What, if anything, did Mr. Tita direct you or any of the
22 others to do during the loading of the container?

23 A. He was just, like, watching what we were putting in. And
24 he would like "Hey, put this table on this side, put this on
25 the side." But he was just, like, watching and saying he

1 doesn't want to get his hands dirty, though, most of the
2 times.

3 Q. If we could take a look at Government's Exhibit 21F. Do
4 you recognize those items?

5 A. Yeah.

6 Q. What are they?

7 A. These are guns that we did wrap.

8 Q. There appears to be handwriting on these packages. Do you
9 see that? We can enlarge it a little bit please, Mr. Gasque.
10 What's the handwriting for? Do you know how the handwriting
11 got on there?

12 A. Yeah, these handwritings, they were like -- because when
13 we put the ground nuts together, the peanuts together, for
14 instance if we put like 30 in one packet, we would have like
15 30 pieces of ground nuts. And then maybe 2, 8 out of 15, 3
16 AKs.

17 Q. Were these the containers that were put in the compressor
18 containers with the foam?

19 A. Yes, ma'am.

20 Q. And what was the point of writing on the packages that
21 went on the container what was in the package? Why were you
22 doing that?

23 A. We were doing that because the boys down there on Ground
24 Zero, when they receive these items, because they are not
25 trained soldiers, though. They are not conventional soldiers.

1 They are not trained. So when they received these items, from
2 the description and the writing, they'll know what this is
3 this and this is that.

4 Q. Okay. Do you know who wrote the descriptions on the
5 packages?

6 A. Sometimes I would write them, sometimes Fru will, Fonguh,
7 Collins. There was no specific person that will write.

8 Q. Now did there come a time that the container that you
9 loaded left the Port of Baltimore to your understanding and
10 headed overseas?

11 A. Yeah.

12 Q. Okay. Now after the container had left Baltimore, did you
13 continue working in the basement and shipping items?

14 A. Yes.

15 Q. Now I want to show you what's been marked as Government's
16 Exhibit 34A. And if we could turn to the second page, please.
17 Do you recognize that?

18 A. Yup.

19 Q. What is it, please?

20 A. Stick and Peanut Projects.

21 Q. Is it a Power Point presentation?

22 A. No, it's like I said, during our operations we use coded
23 language.

24 Q. I'm sorry, I wasn't asking about the words, I was asking
25 what this series of pages are. Do you recognize this as part

1 of a presentation, like a Power Point?

2 A. Yeah, yeah, yeah, yeah.

3 Q. Were you present at any point, any type of event when the
4 Power Point was presented?

5 A. Yes, I was present.

6 Q. Okay. And do you recall where that was?

7 A. Yeah.

8 Q. Where was it?

9 A. This presentation took place at the Wilson Fonguh
10 residence.

11 Q. Do you recall if Mr. Tita was there at that time?

12 A. All of us was there. Everybody was there. Tita, Fonguh
13 because he was the resident. I was there. I was there with my
14 wife and my -- my exchange wife with my children.

15 Q. Was Mr. Nji there?

16 A. Nji was there with his wife and his kids.

17 Q. Do you recall who made the presentation?

18 A. Mike did.

19 **MR. BASILE:** I'm sorry, I didn't hear that, sir.

20 **THE WITNESS:** Mike did. Rogers was there. He just
21 came inside. Rogers was present.

22 **BY MS. GAVIN:**

23 Q. Now directing your attention to Government's Exhibit 35M.

24 I'm sorry, Mr. Gasque, 35N. Up at the top, the blue box

25 indicates a phone number added. Do you recognize the phone

1 number of 301-825-3298?

2 A. That's my phone number.

3 Q. Okay. And then below that in the green box, a message
4 from the Ghost that says, "Please welcome a dedicated soldier,
5 our brother Walters." This is on February 11, 2019. Do you see
6 that?

7 A. Yeah.

8 Q. And then below that in blue, a message from Wilson Fonguh
9 that says, "Welcome at Big" D-a-d-y that same day. What's
10 happening here in terms of your number being added to this?

11 A. This is the group. This is the same group whereby we got
12 together to do what we did to save the lives of our people.

13 Q. And Mr. Fonguh says "Welcome at Big" D-a-d-y. What does
14 that mean?

15 A. They're just like -- he's just like telling the other
16 comrades that --

17 Q. No, I'm sorry. What does he mean by Big D-a-d-y?

18 A. Oh, that's my coded name, my aka.

19 Q. And how do you pronounce that?

20 A. Daddy.

21 Q. So it's misspelled here. You think it should be two Ds?

22 A. Yeah, it's two Ds.

23 Q. And so then let me show you what's been marked as
24 Government's Exhibit 35A. And the fifth, sixth, seventh entry
25 down, do you see your Walters Mankon Bro on there as part of

1 that group?

2 A. Yeah.

3 Q. Now did there come a point in time that you learned that
4 the container that you all shipped out in January of 2019 did
5 not get delivered to Nigeria?

6 A. Yeah.

7 Q. How did you learn that?

8 A. I can't remember exactly where I got the information, but
9 it was a phone call.

10 Q. Okay. And did you then receive any more information about
11 the container not being delivered? What was happening to it?

12 A. I remember it was a phone call. I can't remember who did
13 it, but it was from one of us told me that the container has
14 been rerouted back to the Port of Baltimore. So for some
15 reason I called Mike to find out because he was the one that
16 was in charge, he and Ernst Bangarie, they were the one in
17 charge of doing the shipment. So I called him, I was like --
18 he said yeah, for some reason the container has been rerouted.
19 We don't know, but maybe -- so I was asking maybe did
20 Bangarie, did he do a good job? Because he was the one in
21 charge of doing the paperwork for the shipment. So he says he
22 doesn't know, but he will get in touch with the authorities of
23 the Port of Baltimore to find out.

24 Q. What did you mean by Bangarie doing a good job?

25 A. Because before this, our project, before he is doing

1 shipments back in Cameroon.

2 Q. Okay. Did you have --

3 A. That's why he was assigned to do that.

4 Q. Did you have any understanding as to whether Mr. Bangarie
5 was going to in any way identify that the container contained
6 ammunition and firearms and all that stuff?

7 A. No.

8 Q. You didn't have an understanding or did you understand he
9 was not going to do that?

10 A. I did have an understanding he was not going to do that
11 because he's part of our group. We know what's in there, the
12 content of the container. We don't want anyone to know it.

13 Q. Now throughout the spring of 2019, did you and the rest
14 of the people in the conspiracy continue to meet and prepare
15 consignments? Meet by Zoom or in person or both?

16 A. After the container was brought back?

17 Q. No, I'm talking about before it gets back when it's on
18 its way back. So in that time period did you all continue --

19 A. Yeah, yeah, yeah.

20 Q. Okay. And at any point did Mr. St. Michael give any
21 updates at any of these meetings about where the container
22 was, whether it was still on its way back or anything along
23 those lines?

24 A. I don't -- I can't remember if it's from him directly,
25 but I remember we had some kind of, I think, a telephone

1 something, conversation and then they said this container was
2 rerouted maybe from Spain, that is from Spain that they
3 rerouted it back.

4 Q. At any point -- was this in a group conversation?

5 A. Yeah.

6 Q. Yeah, okay. And this was the members of the group
7 including -- did it include Mr. Tita?

8 A. Yeah.

9 Q. Did it include --

10 A. All of us, everybody.

11 Q. Just let me ask, though, did it include Mr. Fonguh?

12 A. Yeah.

13 Q. Did it include Mr. Nji?

14 A. Yeah.

15 Q. At any point during that conversation did anyone raise
16 the issue of legality of the shipment, that it was legal?

17 A. No, no, no, no.

18 Q. Did anyone raise or mention an export license?

19 A. No.

20 Q. Did anyone ask why the authorities or why the container
21 was on the way back?

22 A. No.

23 Q. Did you have any understanding as to what was happening
24 there?

25 A. Yeah.

1 Q. At that point?

2 A. Yeah, my understanding at that point was we don't know
3 what is happening because the way we are putting -- the way we
4 were wrapping the stuff, we knew that if it is going to beat
5 the system in the Baltimore port, then it's going to beat the
6 system back to the destination. So when they said the
7 container, they rerouted the container, I was like started
8 thinking like maybe this is something that is going to get us
9 in trouble. I, for one, was thinking that.

10 Q. Did the group have any discussions about what to do when
11 the container got back or what to say or anything like that?

12 A. No.

13 Q. Was there any discussion as to whether St. Michael should
14 say anything to the port authorities?

15 A. No.

16 Q. Okay. Was there any plan at all about what you would do
17 when the container got back?

18 A. There was no plan because we -- I, for one, I knew that
19 this is trouble coming because --

20 Q. And why was it trouble coming?

21 A. Because the container, the content of the container
22 wasn't right. We were doing something behind the scenes that
23 we don't want anybody to know.

24 Q. Okay. Did you know it was against the law to do it the
25 way you were doing it?

1 A. Yes, by shipping, yup.

2 Q. Did you ever hear St. Michael tell -- did St. Michael
3 ever tell you that he had a license to ship overseas?

4 A. No. All I know that he -- what he told me was that he has
5 a license to -- because he was a military guy then, he has a
6 license to deal with ammunitions and guns.

7 Q. What did you understand "deal with ammunitions and guns"
8 to mean?

9 A. To the best of my -- what I understand by dealing with
10 weapons and guns means because he used to take me to the
11 range, teach me how to shoot. So I understand if he can maybe
12 acquire a weapon or assemble weapon. He plays with weapons.

13 Q. Okay.

14 A. So that's what I know, understand by license to deal with
15 weapon. But in terms of shipment, no. He didn't tell me that.

16 **MR. BASILE:** I'm sorry, I didn't hear that, sir.
17 Could you repeat that?

18 **THE WITNESS:** He didn't tell me that he has a
19 license to ship.

20 **BY MS. GAVIN:**

21 Q. I'm going to show you what's been marked as Government's
22 Exhibit 25K. And do you recognize this, this first page, TD
23 Bank document? Appears to be a slip right there and then the
24 second page. Do you recognize that?

25 A. Yeah, I recognize this.

1 Q. And this is dated June 29, 2019?

2 A. Yeah, I recognize it.

3 Q. And what is this?

4 A. This is a receipt of a shipment that I made.

5 Q. Okay. And do you recall what you were shipping?

6 A. Yeah, I was shipping -- I did ship a generator that was
7 stocked with ammunitions.

8 Q. And was that part of the conspiracy plan and this was
9 part of what you guys had been doing?

10 A. Yes, ma'am.

11 Q. And where did you get the money to -- the front page, I'm
12 sorry. Let me talk about that. It appears to be dated June
13 29, 2019, shows a withdrawal of \$1,000. Is that a withdrawal
14 from your account, do you know?

15 A. No, this money was coming from our phone because we had
16 -- Mike was the one in charge of the finances that we put
17 together.

18 Q. And what did you use -- did you get -- the receipt that's
19 attached to it says \$1,000, so was that -- what does that
20 signify? Did you give cash from this?

21 A. Yeah, Mike gave me cash.

22 Q. And did you give that to the shipper?

23 A. Yeah, I paid for the shipment.

24 **MS. GAVIN:** Nothing further, Your Honor.

25 **THE COURT:** All right, thank you. Defense counsel?

1 Mr. Basile?

2 MR. BASILE: Yes, Your Honor.

3 C R O S S - E X A M I N A T I O N

4 BY MR. BASILE:

5 Q. Now when the Government first questioned you, they asked
6 you questions about what your expectations were with respect
7 to sentencing in this case. Do you recall that?

8 A. Can you repeat the question, sir?

9 Q. When the Government first started questioning you they
10 asked you about an agreement that you had with them and what
11 your expectations were as to sentencing in this case. Do you
12 remember that?

13 A. I don't think we had any agreement.

14 Q. Okay, sir. I'm going to show you what's been marked as
15 Defendant's Exhibit No. 13. If I can approach the witness,
16 Your Honor?

17 THE COURT: Sure. That's for identification?

18 MR. BASILE: Yes, Your Honor.

19 BY MR. BASILE:

20 Q. Let me show you Exhibit No. 13 which says "sealed
21 supplement to the plea agreement." Do you see that?

22 A. Sealed supplement to the plea agreement, yeah.

23 Q. Okay. Do you recognize that document?

24 A. Yup.

25 Q. All right, look at the last page. Is that your signature

1 on the last page?

2 A. Yup.

3 Q. And in that agreement -- let me have that back for just a
4 moment so I can refer to it. In that agreement you agreed
5 with the Government that you would have immunity for
6 statements that you made during the time that you were
7 cooperating with the Government. Do you remember that?

8 A. Immunity like in what?

9 Q. Well, take a look at paragraph 2. Read that to yourself,
10 okay? Near the bottom. Have you read that paragraph?

11 A. Yup.

12 Q. Did you read the paragraph, sir?

13 A. Yup.

14 Q. Okay. And that paragraph says, "In order to permit the
15 defendant to make disclosures to the Government under this
16 agreement, any information and documents that the defendant
17 fully and truthfully discloses to the Government during the
18 course of cooperation pursuant to this agreement will not be
19 used against the defendant directly or indirectly by this
20 office in any federal criminal case."

21 That was your understanding of part of the
22 agreement, correct?

23 A. That's my understanding, but what I'm saying here is the
24 fact --

25 Q. Well, I'm just asking you about your understanding about

1 an immunity agreement. You understood that that was part of
2 your agreement with the Government, didn't you?

3 A. Yup.

4 Q. Okay. Now let me go on to another part of this agreement.
5 You had an expectation that if you testified and cooperated
6 with the Government and provided information in this case,
7 that you could get a lighter sentence, isn't that correct?

8 A. No.

9 Q. Okay, let me read to you paragraph four.

10 **MS. GAVIN:** Your Honor, could I just object to Mr.
11 Basile standing in front of the witness?

12 **THE COURT:** It probably, all things considered,
13 would be better if you were a little further back. I
14 understand you're just wanting him to be -- is there another
15 copy of the agreement maybe so --

16 **MS. GAVIN:** Happy to --

17 **THE COURT:** --he could have a copy and you could
18 have a copy? That might be best.

19 **MR. BASILE:** Fine.

20 **BY MR. BASILE:**

21 Q. Sir, let me hand you another copy of this agreement, page
22 3 of your sealed agreement. And it's even been highlighted in
23 yellow. Do you see that?

24 **MS. GAVIN:** What paragraph?

25 **MR. BASILE:** Just a second, counsel. Let me ask the

1 question first.

2 **BY MR. BASILE:**

3 Q. Do you see where it's highlighted?

4 A. Yeah, I see where it's highlighted.

5 Q. That's paragraph 4 on page 3, is it not?

6 A. Yeah.

7 Q. Okay, and let me read that along with you if I can. And
8 paragraph 4 says, "If this office" -- referring to the
9 Government -- "determines that the defendant has provided
10 substantial assistance in an investigation or prosecution of
11 others and if the defendant has fully complied with all
12 obligations under this agreement and the sealed supplement,
13 this office may make a motion pursuant to USSG 5K1.1 if
14 appropriate requesting that the Court sentence the defendant
15 in light of the advisory factors set forth in 5K1.1(a)(1)-5 in
16 requesting a downward departure."

17 You understood that to mean that the Government
18 would recommend a lesser sentence or would recommend a lower
19 departure of the sentencing guidelines which could result in a
20 lesser sentence, didn't you understand that?

21 A. I didn't understand this.

22 Q. Okay. Well, you signed it so you're saying you didn't
23 understand the agreement that you signed?

24 A. Yes, I did sign it. But for some reason I didn't have
25 time to go through the document.

1 Q. Okay, so your understanding today is that -- well, let me
2 ask you this: Do you have any understanding in any way that
3 you could get a lighter sentence as a result of testifying and
4 cooperating with the Government?

5 A. No.

6 Q. Okay. Were you subpoenaed to be here today?

7 A. Can you --

8 Q. Did you receive a subpoena to come to court today to
9 testify?

10 A. Hopefully you can help me with -- maybe bring it down. I
11 don't understand.

12 Q. Do you know what a subpoena is?

13 A. English is my second language, so if maybe someone could
14 help to -- subpoena?

15 Q. I'm just asking, do you know what a subpoena is?

16 A. No.

17 Q. Okay. Did you receive a court order to come to court
18 today to testify?

19 A. Yes.

20 Q. Okay.

21 **MR. BASILE:** Your Honor, at this point I'm going to
22 offer Defendant's 13 into evidence.

23 **MS. GAVIN:** Objection, Your Honor.

24 **THE COURT:** We'll take that up later. For now it's
25 marked for Identification.

1 **MR. BASILE:** Thank you, Your Honor.

2 **BY MR. BASILE:**

3 Q. Now let me ask you, how many hours per week did you work
4 at the lab?

5 A. Um, probably let me say sometimes 16, sometimes 32.

6 Q. I'm sorry, sometimes what?

7 A. 16, sometimes 32.

8 Q. 15 or 16 hours per week? I'm not hearing you very well,
9 sir. How many hours per week did you work in the lab?

10 A. Sometimes 16, 32.

11 **THE COURT:** 16, 32.

12 **BY MR. BASILE:**

13 Q. Between 16 and 32 hours?

14 A. Yes, sir.

15 Q. And was that every week?

16 A. Not every week.

17 Q. Okay, were there weeks when you didn't work at all?

18 A. Yeah.

19 Q. How many weeks did you not work in the lab at all?

20 A. I can't recall, because I usually go there when I'm off.

21 Q. Okay, you didn't keep a record then, did you?

22 A. Yeah, I didn't.

23 Q. In fact, there were a number of weeks where you didn't
24 work in the lab at all, isn't that true?

25 A. Yes.

1 Q. And there were a number of weeks where you worked maybe
2 two or three hours in the lab?

3 A. More than that because we used to get there about 7 p.m.
4 We worked all night until about maybe 2:30 or 3.

5 Q. Well, how many times did you work all night?

6 A. How many times did I work all night?

7 Q. Yes.

8 A. Maybe -- I can't break that down, sir, because I don't
9 understand by "work all night." You said how many times did we
10 work --

11 Q. How many times did you go to the lab at 7 at night and
12 work until 2 in the morning?

13 A. Let me say like it could be like -- because this process
14 went on for more than a year.

15 Q. Okay. My question is how many times, if you recall, did
16 you work --

17 A. I can't recall. I can't recall.

18 Q. Let me finish my question, sir, please. How many times
19 did you work from 7 at night until 2 in the morning, do you
20 recall?

21 A. I can't recall.

22 Q. And you really don't recall the total number of hours you
23 worked in the lab, do you?

24 A. Like I said, approximately 16 to 32.

25 Q. Right. And when did you -- what month and what year did

1 you first start working in the lab?

2 A. We started -- we started this process sometime in 2017.

3 Q. You don't --

4 A. I'm not good at dates, though. I'm not good at dates,
5 keeping dates.

6 Q. Do you remember what month in 2017?

7 A. No.

8 Q. Okay. And you worked in the lab in 2018?

9 A. Yes.

10 Q. Did you work in the lab in 2019?

11 A. No, I don't -- not quite.

12 Q. So throughout the year 2019 you did not work in the lab
13 at all?

14 A. Like I said, I'm not very good at dates, but I know when
15 this -- when this war was declared on us, when we decided to
16 defend our people we started in 2017.

17 Q. Okay, good. I just want to know do you recall --

18 A. Through 2018.

19 Q. Do you recall whether or not you worked in the lab at all
20 in the year 2019?

21 A. I might be, but I can't recall.

22 Q. Okay.

23 A. I can't recall.

24 Q. Do you recall how many times Mr. Nji was present working
25 in the lab when you were physically present?

1 A. Like I said, 8 out of 10 times.

2 Q. Well, 8 out of 10 times that you were there, is that what
3 you're saying?

4 A. Yes.

5 Q. Okay. But you don't know if he was working in the lab in
6 -- let me withdraw that question. Of your own personal
7 observation, you don't know that he was working in the lab in
8 2019 at all, do you?

9 A. Like I told you, sir, I'm not good at dates. I'm not good
10 at keeping track.

11 Q. Is it fair to say you don't recall?

12 A. Yeah.

13 Q. Okay. And in 2018, how often was Mr. Nji working in the
14 lab, to your personal observation, in your presence?

15 A. Like I said again, 8 out of 10 times.

16 Q. I understand, but I want to know how many times total, if
17 you recall.

18 **MS. GAVIN:** Objection, Your Honor.

19 **MR. BASILE:** Your Honor, this is cross-examination.

20 **THE COURT:** It is and it has been asked and
21 answered. Next?

22 **BY MR. BASILE:**

23 Q. In 2017, how many times to your observation was Mr. Nji
24 in the lab?

25 A. Like I said, 8 out of 10 times we were there together.

1 Q. And you don't recall how many total times you were there
2 at that time, do you?

3 A. Like I said, 8 out of 10 times we were there.

4 Q. And why was it that you wanted to perform service at the
5 lab?

6 A. Can you repeat yourself, sir?

7 Q. Why did you want to work in the lab?

8 A. I wanted to work -- I decided to work in the lab because
9 the war that was declared to my people took the life of my
10 baby sister. So that's what -- that's what gave me the
11 motivation to make sure these people that killed my baby
12 sister --

13 Q. Okay, and I think you've testified earlier today that the
14 Cameroonian Government, if they had the names of people who
15 were working against them would take action against those
16 people, is that your understanding?

17 **MS. GAVIN:** Objection.

18 **THE WITNESS:** When did I testify today? Come back
19 again?

20 **BY MR. BASILE:**

21 Q. Sir, let me rephrase the question. Did you have any
22 worries about the Cameroonian Government knowing that you were
23 doing work in the lab?

24 A. No. Our worries were for the Cameroon Government not to
25 confiscate what we were sending down to our people to help

1 themselves.

2 Q. So you were not concerned then that the Cameroonian
3 Government would know about the work that you were doing here?

4 A. No. We were concerned about the American authorities
5 here.

6 Q. Now since you had seen Mr. Nji working in the lab with
7 you, were there also times when Mr. Nji was packing clothing,
8 medicines, and food for shipment to Cameroon?

9 A. Nope. The only time -- when -- when this Kindness Program
10 started, when this Kindness group -- because this group was
11 named Kindness. Initially when we started, we did, all of us
12 we did do packaging clothes, medication, we did that, we did
13 that. Later on we transitioned from the clothes and the
14 medication now to weapons.

15 Q. But the purpose of the Kindness Program was to ship
16 humanitarian aid to Cameroon, isn't that true?

17 A. The purpose of the Kindness, this group Kindness was to
18 help our people back there defend themselves. And while
19 defending themselves, also help them with humanitarian stuff,
20 both.

21 Q. Well, let me ask you this: Wasn't the purpose of the
22 Peanut Program to send ammunition and firearms to Cameroon?

23 A. Yeah.

24 Q. Okay, so why was there a Peanut Program and a Kindness
25 Program if they both did the same thing?

1 A. The Kindness -- the name Kindness is the name of the
2 group. It's not a program. Kindness is the name of the group.

3 Q. Why were there two separate groups if they were doing the
4 same thing?

5 A. No, they were not two separate groups, sir. Kindness was
6 the name of the group. Like you can form a group and then you
7 give a name. But the Peanut Program, the Peanut Program was a
8 program within the Kindness group.

9 Q. Okay, so the Peanut -- did the Peanut Program exist
10 before the Kindness group or was it formed after the Kindness
11 group was formed?

12 A. The Peanut Program came after the Kindness group was
13 formed.

14 Q. Okay, and what was that, what year?

15 A. That was -- like I said, I'm not good at dates, but I
16 know it's sometime in 2000-maybe 17 or 18. I'm not good at
17 dates.

18 Q. 2017 or '18?

19 A. Yeah, I'm not good at dates.

20 Q. Now all of the lab work that you did was in Tamufor's
21 basement; is that correct, St. Michael's basement?

22 A. Yes, sir.

23 Q. And Mr. Tamufor St. Michael ran the lab, did he not?

24 A. He did.

25 Q. Okay, and he decided who would come and work and when

1 they would work, did he not?

2 A. He always send out the request for who is available to
3 work because we got our separate schedules, our separate work
4 schedules.

5 Q. So he recruited people to come to the lab to work?

6 A. Not that he recruited people. We of the Southern Cameroon
7 instruction, we came together and said, we cannot sit and
8 watch this French Cameroon Government move into our villages,
9 kill children, kill women and burn them down. We decided to
10 come together. It was a mutual understanding. It's not that
11 Mike recruited anybody.

12 Q. Okay. And when workers were working in the lab, did Mike
13 as you call him or St. Michael, supervise the workers and
14 direct their work?

15 A. Yes.

16 Q. And did he assign certain tasks to workers?

17 A. Yes.

18 Q. And he assigned a task to you of grinding down serial
19 numbers, didn't he?

20 A. Yes.

21 Q. And how much time, if you can recall, did you spend
22 grinding down serial numbers from the firearms?

23 A. Like I said, it doesn't take up to five minutes for me to
24 take off a serial number from a single rifle.

25 Q. Well, more of what I'm asking you, sir, is -- let me --

1 okay, let me move on with another question. Did St. Michael
2 ever grind off serial numbers?

3 A. Well, maybe -- not in my presence. Might be when I'm
4 gone.

5 Q. In your presence did you see anybody else grinding off
6 serial numbers?

7 A. I was the only one assigned to that specific task.

8 Q. Okay. Let me ask you, during the first six months that
9 you were working in the lab, did Mike ever tell you what was
10 being done with the ammunition and the firearms that were in
11 his basement?

12 A. Yes.

13 Q. Okay. Did he tell you from the very beginning what was
14 being done with these items?

15 A. All of us knew what was being done. It's not --

16 Q. Sorry, stop. I didn't ask you what you knew. Really what
17 I want to know is if St. Michael told you what was being done
18 with those firearms and ammunition in the first six months of
19 you working there.

20 A. What I just said, we are adults. When this calamity
21 before our people, we came together as a group. It was, it was
22 a conversation agreement. We came together as a group, so it's
23 not an issue of Mike recruiting somebody or telling somebody
24 what was done with the weapons. We knew what the weapons were
25 going to do. These weapons were going to defend and secure our

1 people.

2 Q. Okay. And you also I think had mentioned something about
3 going to the shooting range. Did you and Mr. Mike go to the
4 shooting range?

5 A. Yeah.

6 Q. And at the shooting range you fired some of the
7 ammunition that you were preparing in the lab?

8 A. Not the ones that we were preparing.

9 Q. Okay. Did you use some of the firearms that were in the
10 lab?

11 A. No. We used to acquire firearms. We used to acquire
12 ammunitions. When we go to that range he would acquire
13 ammunitions from there.

14 Q. You knew during the time you were working in the lab that
15 Mike was in the U.S. military, did you not?

16 A. I knew.

17 Q. And you knew that he was in the Navy, wasn't he?

18 A. Yes, I knew.

19 Q. Did you know what his rank was?

20 A. No, I didn't know.

21 Q. And you knew that he actually had a career in the
22 military, isn't that true?

23 A. Yeah.

24 Q. And it's your testimony that Mike had told everybody in
25 the lab that he had a license, but he didn't say what that

1 license was for. Is that your testimony?

2 A. He didn't -- he didn't -- I didn't -- he didn't tell,
3 like, he didn't bring -- he didn't bring us in a group and
4 tell us that. We had a conversation. Mike and I had a
5 conversation.

6 Q. When you say "we," who are you talking about?

7 A. Like all of us that are involved in the project.

8 Q. Okay.

9 A. It was not like in a setting whereby he sat all of us
10 down and said oh, I have this license to do this and that,
11 that, that. Maybe he could, like he could have done it because
12 not every day -- what was -- it was not every day that I used
13 to go to the lab. We used to come to the lab on different
14 occasions.

15 Q. Okay, so --

16 A. Depending on your schedule.

17 Q. Right, so you don't know of your personal knowledge, your
18 personal observation what conversations about licensing went
19 on between Mr. Mike and other members of the group, do you?

20 **MS. GAVIN:** Objection.

21 **THE COURT:** If he wasn't present --

22 **MR. BASILE:** Well, that's what I'm trying to
23 emphasize, Your Honor.

24 **THE COURT:** Overruled.

25 **BY MR. BASILE:**

1 Q. Sir, my question is you don't know of your personal
2 knowledge, personal observation what conversations Mr. Mike
3 had with other members of the group regarding licensing, do
4 you?

5 **THE COURT:** When he wasn't present.

6 **MR. BASILE:** Yes, that's why I'm saying personal
7 knowledge when you were not present.

8 **THE WITNESS:** I don't know.

9 **MR. BASILE:** Your Honor, if I might approach the
10 witness, I'd like to get the copy of Exhibit 13 back.

11 **THE COURT:** All right.

12 **BY MR. BASILE:**

13 Q. Now were you also concerned that if the Cameroonian
14 Government found out about the shipments, that the Cameroonian
15 Government would somehow take these shipments?

16 A. Like I said, our major concern was for the U.S.
17 authorities not to discover what we were putting together and
18 sending back to Cameroon. And also, we were concerned like you
19 said that if the Cameroonian Government, if they could lay
20 hands on it, they'll confiscate it.

21 Q. So that was a concern of yours that the Cameroonian
22 Government would somehow confiscate the shipment if they found
23 out about it?

24 A. Yup.

25 Q. Well let me ask you this: The notebooks that you say

1 that Fru was writing in, those notebooks were always kept in
2 the basement of Mike's house, isn't that true?

3 A. Well, I don't know where precise that notebook was being
4 kept, but all I know is those -- all those documents, Mike was
5 keeping them. I don't know if he leaves them in his basement
6 or he takes them upstairs into his room, I don't know. But
7 everything was left in Mike's address, in Mike's keeping.

8 Q. Now the actual shipping of these items, the ammunition
9 and the firearms, the shipping was -- Mr. Nji had nothing to
10 do with the actual shipping, did he?

11 A. He participated in the loading.

12 Q. I didn't ask you that, sir. I'll get to that in a second.
13 As to the shipping, arrangements for the shipping, doing the
14 shipping, Mr. Nji had no part in that, did he?

15 A. Well, I don't know, but all I know is the shipment was
16 between -- the shipment arrangement was between Mr. Mike and
17 Ernst Bangarie.

18 Q. Who?

19 A. Ernst Bangarie.

20 Q. Mr. Bangarie. When the container arrived, when the
21 container from Minnesota arrived, was it half-full?

22 A. No. I said the day I arrived to do my own share of the
23 work the container was already a little bit -- because that,
24 that particular container -- the container came from
25 Minnesota, yeah, I remember the container came from Minnesota

1 with some stuff in there.

2 Q. Do you know what was in it when it came from Minnesota?
3 Did you observe what was in it?

4 A. I saw there were like used dolls, school -- little chairs
5 for toddlers in school and there was a truck in there too, a
6 Toyota, something like a U-Haul Toyota truck.

7 Q. Did you see what was in the U-Haul truck?

8 A. The U-Haul truck, the content of the U-Haul truck?

9 Q. Yes, did you see what was inside the U-Haul truck?

10 A. When the U-Haul truck came, when they took it out there
11 was nothing. It was us that loaded the U-Haul truck.

12 Q. I'm sorry, did you say "it was us that loaded the U-Haul
13 truck"?

14 A. Yeah.

15 Q. Did you see what was inside the U-Haul truck?

16 A. It was -- it was vacant.

17 Q. It was vacant, okay. Did you ever load anything into the
18 U-Haul truck?

19 A. Yes, sir.

20 Q. What did you load into the U-Haul truck, you personally?

21 A. Us, not me personally.

22 Q. I'm asking about you, sir. I want to know what you did.
23 What did you load into the U-Haul truck?

24 A. We --

25 Q. Sir, sir, stop.

1 A. When you say me, I, when you say me --

2 THE COURT: Excuse me, sir, let's -- you still have
3 a little bit more to go. I'm thinking at this time we're just
4 going to take a short recess and then we'll try the question
5 again, if we need to. All right? Let's take a recess.

6 (Recess was taken.)

7 THE COURT: Just asking, will you be continuing with
8 this witness?

9 MR. BASILE: Yes, Your Honor.

10 THE COURT: All right, go ahead and get the witness
11 in, that's fine, and then the jury.

12 (Jury arrived.)

13 THE COURT: Thanks, you can be seated. Mr. Basile.

14 MR. BASILE: Thank you, Your Honor.

15 BY MR. BASILE:

16 Q. Now do you know a person by the name of Commander Wall?

17 A. That's how people used to refer to me.

18 Q. You're referred to as Commander Wall?

19 A. Yeah.

20 Q. And that's because you command an armed group in
21 Ambazonia, do you not?

22 A. It's just his own way to address me. I don't know why.

23 Q. Well, do you command an armed group in Ambazonia?

24 A. No.

25 Q. Do you have any connection with armed groups in

1 Ambazonia?

2 A. Yup.

3 Q. What is your connection?

4 A. My connection to Ambaland Kwifor is one of the sponsors.

5 Q. So you sponsored Ambaland Kwifor?

6 A. We provided.

7 Q. And when you say "sponsor," what does that mean?

8 A. It means we provide materials to defend our people.

9 Q. Did you ever send a compressor or a generator to Ambaland
10 Kwifor?

11 A. I did send a compressor to Ambaland Kwifor.

12 Q. I'm sorry?

13 A. I did.

14 Q. You did?

15 A. Yeah.

16 Q. Okay, when was that?

17 A. When?

18 Q. Yes.

19 A. Like I said, I'm not good at dates though.

20 Q. So you don't know?

21 A. I can't remember the exact date except they could pull up
22 the receipt that I paid for those, for the shipment and then
23 I'll come up with the date.

24 Q. Before Mr. Nji and Mr. Fonguh joined the group in the
25 lab, were you already shipping sticks and ground nuts to

1 Cameroon?

2 A. Nope.

3 Q. And you first met Mr. Nji when?

4 A. Like I said, I met Mr. Nji sometime in 2017.

5 Q. Okay. And was that true also when you met Mr. Fonguh and
6 Mr. Tita?

7 A. Yes.

8 Q. Do you know if there are regular Sunday meetings,
9 meetings every Sunday at the lab?

10 A. Regular Sunday meetings?

11 Q. Yes.

12 A. Nope, there's no regular Sunday meetings. We used to work
13 in the lab on the weekends, most of the times on the weekend,
14 like maybe -- yeah, during the weekends because those, those,
15 those days are the days that we are off, off from our jobs.

16 Q. Have you ever heard the term "foot soldier"?

17 A. Yes.

18 Q. How do you define that term?

19 A. Foot soldier, the term foot soldier is how we refer to
20 the boys down there that are having to defend our people from
21 the French terrorist regime.

22 Q. Now do you recall enrolling in a group or a course known
23 as Think Technology?

24 A. Yes, I did.

25 Q. All right. You were a student there, weren't you?

1 A. Yes.

2 Q. And Think Technology was a school that was owned and
3 taught by Mr. Nji, isn't that true?

4 A. Yeah, he was the instructor.

5 Q. And you signed a contract to receive a course of
6 instruction with him, isn't that true?

7 A. No, I didn't sign a contract.

8 Q. You did not?

9 A. Yup.

10 Q. Did you sign an enrollment agreement?

11 A. Yes, I signed an enrollment agreement.

12 Q. And under that enrollment agreement in exchange for your
13 instruction you agreed to pay him \$3,000, isn't that true?

14 A. Not correct, sir.

15 Q. You deny that?

16 A. Yeah.

17 Q. Did you agree to pay him any amount of money for his
18 instruction?

19 A. The agreement was for me to pay \$300 as registration fee.

20 Q. And that was it?

21 A. Yup.

22 Q. Okay.

23 **MR. BASILE:** Your Honor, I'm going to have this
24 exhibit marked as 14.

25 **THE COURT:** I think we talked about this a little

1 bit before, but this would be for your client, Exhibit 14?

2 **MR. BASILE:** Yes, Your Honor.

3 **THE COURT:** Mr. Nji, all right.

4 **MR. BASILE:** Mr. Nji is Exhibit 14. Maybe I should
5 mark his name on there. May I approach the witness to hand
6 this to him, Your Honor?

7 **THE COURT:** Sure.

8 **BY MR. BASILE:**

9 Q. Let me show you, sir, is this the enrollment agreement
10 that I just asked you about?

11 A. This is, yeah, this is the enrollment agreement.

12 Q. Is that your signature on the last page, sir?

13 A. It is my signature, but --

14 Q. Okay, and on the front page you agreed to pay a tuition
15 of \$3,000, didn't you?

16 A. No, sir.

17 Q. Okay.

18 A. When this agreement was signed, when I did sign this
19 agreement, all these other columns, they were like, they were
20 blank spaces.

21 Q. Okay. And sir, you owe \$2,700 to Mr. Nji for your
22 instruction that you refuse to pay?

23 A. Not correct, sir. That's not correct.

24 Q. That's not true. Do you owe him any money under that
25 enrollment agreement?

1 A. No, I paid him \$300 for registration and that was it.

2 Q. All right, thank you. Your Honor, may I approach the
3 witness? And how many classes did you attend at Think
4 Technology?

5 A. I can't really -- in terms of like numbers of classes I
6 attended, I attended so many classes, but due to my family
7 situation I had to drop out. I can't say I attended one or two
8 or three, but I attended like so many times, so I had to drop
9 out because of my family situation.

10 **MR. BASILE:** Your Honor, for the record I'd offer
11 Exhibit 14 Nji.

12 A. Come back again?

13 **THE COURT:** It's all right, he's just offering it as
14 an exhibit. Okay.

15 **BY MR. BASILE:**

16 Q. Let me get back to your testimony about the filing
17 machine that you were operating. As I wrote down from your
18 testimony, you were using the filing machine to avoid the
19 Cameroon or the U.S. Government from keeping track of the
20 source of those weapons. Is that a fair statement?

21 A. Yes.

22 Q. Okay. And so if the Cameroon Government were able to
23 track those weapons what, in your mind, did you think would
24 happen?

25 **MS. GAVIN:** Objection, Your Honor.

1 **THE COURT:** Overruled.

2 **MR. BASILE:** Go ahead.

3 **THE WITNESS:** In my mind because like I said, like I
4 said previously, what happened that Mike decided for us to be
5 filing the weapon is because one of the foot soldiers fell
6 with the weapon that was from us.

7 Q. So you were concerned about the Cameroonian Government
8 retaliating?

9 A. No, the Cameroon Government tracing back the source of
10 the weapon back to the U.S.

11 Q. And what would happen then, do you know or do you not
12 know?

13 A. I know.

14 Q. So what was your concern about the Cameroonian Government
15 tracing back the weapon?

16 A. Back to the U.S., it's going to get us in trouble.

17 Q. Prior to today, have you met with the Government to
18 discuss what you were going to testify to today?

19 A. Come back again?

20 Q. Prior to today, did you meet with the Government to
21 discuss what you were going to testify to in court today?

22 A. No.

23 Q. So you had no prior discussions regarding your testimony
24 in this case?

25 A. We've had discussions, but not to testify against

1 anybody. I'm just here to set the facts straight. I'm not here
2 to put anybody in trouble, I'm just here to state the facts
3 and what I'm giving you is the fact.

4 Q. Now you've earlier testified to Government's Exhibit 32M
5 and I think you testified that that was a picture of three men
6 and it was a picture of Nji, Fonguh and Bangarie; is that
7 correct?

8 A. Bangarie.

9 Q. Was that a picture of those three gentlemen?

10 A. Yes.

11 Q. And my question to you is what date was that photograph
12 taken?

13 A. Like I said, I'm not good at dates.

14 Q. So you don't know, is that your answer?

15 A. I don't know the date when this picture was taken in the
16 lab.

17 Q. Were you present when that photograph was taken?

18 A. Yes.

19 Q. Who took the photograph?

20 A. I think Mike. If not Mike it would be Fonguh -- I mean,
21 Collins.

22 Q. When you said that Mr. Nji was taking notes, did you see
23 specifically what he was writing in the notebook that you
24 described?

25 A. I can't say I was seeing, I was, like, looking at what he

1 was writing, but I know what he was writing. He was taking
2 inventories, taking stock of everything that we are putting
3 together and everything that we're shipping.

4 Q. But you didn't see him writing that in the notebooks, did
5 you?

6 A. I saw him writing it, but I'm not certain at this time,
7 I'm not going to see --

8 Q. You made reference to somebody by the name of Paul or Mr.
9 Paul. I didn't understand your testimony. Who was Mr. Paul?

10 A. Paul? Paul?

11 Q. Yes. Who is Paul, P-a-u-l?

12 A. Okay, okay, thank you for reminding me. Mr. Paul, Mr.
13 Paul Biye is the president of French Cameroon.

14 Q. Okay. And I think in one of the -- one of the chats that
15 you identified or that was identified, there was some phrase
16 to the effect that *you have killed our people*. What was meant
17 by that, do you know?

18 A. The lady, Edith Ngang who snuck the video out of the lab,
19 on the video that she took on the lab she was projecting that
20 the Peanut -- because we call it Peanut and saying Mr. Paul
21 Biye, you've killed our people enough. We are coming for you.

22 Q. Okay. And then I think you testified Ms. Ngang was
23 excluded from the group after she took that video?

24 A. Yeah, we came to a consensus that she was out of the
25 group.

1 Q. Why did you want her to be taken out of the group?

2 A. I for one or we?

3 Q. I'm sorry?

4 A. You referring to me as opposed to --

5 Q. You said "we." Are you part of "we"?

6 A. Yes.

7 Q. So why did you want her to be excluded from the group?

8 A. I wanted her to be excluded from the group because what
9 she did, she violated the names of our project.

10 Q. Why did that concern you?

11 A. It concerns me because I'm part of the group.

12 Q. Okay, why was that a problem?

13 A. It was a problem because it exposed our dealings, what we
14 were putting together.

15 Q. It exposed your dealings to whom?

16 A. It exposed what we were putting together. These
17 combinations that we are putting together to defend our
18 people.

19 Q. So it exposed you to the Cameroonian Government?

20 A. It exposed us to the Cameroonian Government and to the
21 American authorities too.

22 Q. Let me go back to the testimony about the container. You
23 saw the picture of the container that you identified. You
24 recall seeing that? That was Exhibit 20A. Do you remember
25 that?

1 A. Yes.

2 Q. Okay, and you helped load that container, correct?

3 A. Yes.

4 Q. And when you -- who was with you that day when the
5 container was being loaded?

6 A. Nji was with me. Fonguh was with me. Wilson was with me.
7 Rogers was present and then there was one that -- there was
8 the white guy that brought the -- there was a white guy that
9 brought a tow truck to help lift the car, the car, the Toyota
10 pickup that was loaded in the truck. There was also a guy
11 there that brought I think it was a Tundra, a Tundra -- I
12 don't remember the color of a Tundra truck loaded into that
13 container too.

14 Q. So there were two trucks. Did you load either of those
15 trucks?

16 A. You're talking about loading them into the container?

17 Q. Yes.

18 A. The guy, the white guy that brought the tow truck loaded
19 the cars into the truck.

20 Q. Okay, do you know who that was?

21 A. I don't know the guy.

22 Q. Now once the two trucks were in the container, did you
23 load anything into the trucks?

24 A. Of course.

25 Q. What did you load into the trucks?

1 A. Before -- let me take it back a little bit. Before the
2 white guy came with the tow truck to load the trucks into the
3 container, we have already filled the content of that U-Haul
4 truck.

5 Q. Okay.

6 A. With the tanks.

7 Q. And what did you fill, what did you put in the U-Haul
8 truck, tanks?

9 A. Yes.

10 Q. Were those compressor tanks?

11 A. Yes.

12 Q. How many?

13 A. Approximately there were like seven or six. I can't
14 remember the exact number.

15 Q. Did you take part in putting anything into the compressor
16 tanks?

17 A. Yes.

18 Q. Okay, and what did you put into the compressor tanks?

19 A. I did put all of the packaged, packaged peanuts and guns.

20 Q. Okay. And when did you do that?

21 A. When?

22 Q. When.

23 A. Like I said, I'm not good at dates. I can't remember the
24 exact dates.

25 Q. And just so I'm clear, when you first -- okay, after the

1 trucks were loaded into the container, did you load anything
2 else into the container?

3 A. Yeah.

4 Q. What did you load into the container?

5 A. We then loaded some like I said, some like old dolls,
6 dolls that -- like, a building has been demolished, dolls, old
7 dolls, chairs for like toddlers in kindergarten and some
8 other--

9 Q. And when you first started loading those items in the
10 container, was the container half-full at that time before you
11 began the loading operation?

12 A. Like I said, the container came from Minnesota with some
13 items in it.

14 Q. That's not my question, sir. All I want to know if you
15 know is when you first started loading items into the
16 container, was it empty? Was it half-full? Was it
17 three-quarters full? Do you recall?

18 A. Half-full.

19 Q. Half-full?

20 A. Yeah, almost half-full.

21 Q. Now I think you testified earlier if I understand your
22 testimony that Peanut and Kindness was one group; is that
23 correct?

24 A. Nope, it's not correct.

25 Q. Okay --

1 A. I said Kindness is the name of the group.

2 Q. And Peanut was a --

3 A. Is a project.

4 Q. Was a what?

5 A. A project.

6 Q. Was a project of the Kindness group?

7 A. Thank you, sir, yes.

8 Q. Let me ask you then, why were there two different chat
9 groups for Kindness and Peanut Project?

10 A. There were not two different chat groups.

11 Q. Is your testimony that there was only one chat group?

12 A. There were -- like I said, there were not two chat groups
13 because the same members that -- I don't know why the
14 administrator make it that way, I don't know. But on those
15 same chat groups, you have the same members. You have the same
16 -- basically the same people. So to my understanding it's the
17 same group, but I don't know why the administrator of the
18 group decided to put it on two separate papers.

19 Q. And the administrator was Mr. St. Michael?

20 A. No, the administrator of that group was Rogers --

21 Q. Akem?

22 A. Yeah.

23 **MR. BASILE:** That's all the questions I have, Your
24 Honor.

25 **THE COURT:** Mr. Benowitz?

1 **MR. BENOWITZ:** Yes, Your Honor. May I approach?

2 **C R O S S - E X A M I N A T I O N**

3 **BY MR. BENOWITZ:**

4 Q. Good afternoon, Mr. Muma.

5 A. Good afternoon.

6 Q. I'm going to go through this document with you so I want
7 you to have it. I tabbed it so you have the pages that I want
8 to go over with you, okay? So Mr. Muma, I'm showing you
9 what's been marked for Identification as Defendant Tita's
10 Exhibit 26. Do you see the -- I want to just talk to you a
11 little bit about this cover sheet. Do you see that?

12 A. Yeah.

13 Q. Okay. So this is a cover sheet for your plea agreement.
14 Do you see that?

15 A. Yup.

16 Q. Okay. Can you speak up a little bit just so the Court
17 reporter can hear you?

18 A. Yes.

19 Q. Okay, thank you. If you look in sort of the upper
20 left-hand corner I've highlighted where it says Elizabeth
21 Oyer, Esquire. Do you see that?

22 A. Yes.

23 Q. And it says Assistant Federal Public Defender, right?

24 A. Yes.

25 Q. And that's her address, right?

1 A. Yes.

2 Q. That was your lawyer and that's your lawyer now?

3 A. Yes, she transferred me to another lawyer.

4 Q. In the same office?

5 A. Yeah.

6 Q. Okay. And the plea agreement was addressed -- you can see
7 right below that her name was highlighted. It says "Dear Ms.
8 Oyer," right?

9 A. Yes.

10 Q. And then it talks about -- if you go to where it says
11 number one, it talks about the charge that you pled guilty to.
12 Do you see that?

13 A. Yes.

14 Q. And you pled guilty to one count of conspiracy, right?

15 A. Yes.

16 Q. And then if you go to the next page, so that would be
17 page 2 of the agreement and you go to the number 3 -- let me
18 know when you're ready.

19 A. Number 3.

20 Q. Okay, number 3. And then I've highlighted it says "the
21 maximum penalties," right?

22 A. Yeah.

23 Q. Okay. And below that it says "the maximum penalties are
24 up to five years in prison," right?

25 A. Yes.

1 Q. So that's what you're facing in this case, right?

2 A. Yes.

3 Q. Okay. Now let's go to page -- and I'm sorry, I didn't tab
4 it, I missed it by a page. Go to page 8. Let me know when you
5 get there.

6 A. Okay, I'm there.

7 Q. If you look at the bottom, I highlighted it. At the very
8 bottom it says, "I have read this agreement, including the
9 sealed supplement and carefully reviewed every part of it with
10 my attorney." And your attorney is Ms. Oyer, right?

11 A. Yes.

12 Q. And you reviewed the agreement with Ms. Oyer?

13 A. Yes.

14 Q. Okay. "I understand it and I voluntarily agree to it.
15 Specifically I have" -- and I'm going to turn the page -- "I
16 have reviewed the factual and advisory guidelines stipulation
17 with my attorney and I do not wish to change any part of it. I
18 am completely satisfied with the representation of my
19 attorney." And then below that is a signature, right?

20 A. Yes.

21 Q. And that's your signature?

22 A. Yes.

23 Q. You signed it, there's a date 5/11/21. You signed it on
24 that date, right?

25 A. Yes.

1 Q. Okay. And below that it says, "I am the defendant's
2 attorney. I have carefully reviewed every part of this
3 agreement, including the sealed supplement with the defendant.
4 The defendant advises me that the defendant understands and
5 accepts its terms. To my knowledge the defendant's decision to
6 enter into this agreement is an informed and voluntary one."

7 And below that Ms. Oyer signed it, right?

8 A. Yes.

9 Q. So Ms. Oyer went through this agreement with you?

10 A. Yes.

11 Q. Okay. And she explained the terms of the agreement to
12 you, right?

13 A. Yes.

14 Q. And you understood the terms?

15 A. Yes.

16 Q. Okay. Now if you go to the next page, this is the section
17 of the agreement it says "stipulation of facts," right?

18 A. Yes.

19 Q. Okay. Now just -- we're not going to go through all of
20 it, but I want to turn you -- if you keep going, I tabbed it.
21 If you go to the next tab which is page 4 of the stipulation,
22 okay. Now these are facts that you agreed to, right, when you
23 pled guilty, correct?

24 A. Yes.

25 Q. Okay. And it says -- I've highlighted it. It says, "an

1 additional 25 other firearms, all of which had obliterated
2 serial numbers were found during the second search of the
3 container." The container that came back to Baltimore, right?

4 A. Um-hum.

5 Q. And that's true, there were as far as you know, there
6 were 25 firearms with obliterated serial numbers, right?

7 A. Yeah.

8 Q. You were the person who took those serial numbers off the
9 firearms, right?

10 A. Yes.

11 Q. All 25?

12 A. Like I said previously, we used to go there in turns. My
13 own turn when I come in there my job is to take out the serial
14 numbers.

15 Q. Okay.

16 A. So somebody else might come in before I did of which I'm
17 not there.

18 Q. Do you know how many --

19 A. So I can't guarantee that all the 25 firearms --

20 Q. Were yours?

21 A. Were done by me.

22 Q. Okay, fair enough. All right. Now if you go to the next
23 page which is page 5. You signed this statement of facts,
24 right? That's your signature?

25 A. Yes.

1 Q. Okay. Now if you go to the next tab, this is the page 1
2 of the sealed supplement. Do you see that?

3 A. Yeah.

4 Q. I'm not going to go over all the terms with you because
5 Mr. Basile did that, but I want to just ask you a couple of
6 questions. Now if you go to -- I'm sorry, if you go to the
7 next tab which is the last one, do you see that?

8 A. What page is that?

9 Q. It's page 5, the last page of the sealed supplement. Very
10 last page.

11 A. Page 5?

12 Q. Yeah, do you see it?

13 A. Yeah.

14 Q. And what it says is in the middle of the page, I
15 highlighted it --

16 A. I'm on the wrong page. I'm on the wrong page. I'm on
17 the wrong page.

18 Q. I'm sorry, do you want me to --

19 A. I'm on the wrong page.

20 Q. Can I approach? Let me make sure you have it right. Flip
21 the other way, all the way to the end. Just keep going to the
22 very last yellow piece of paper. Yeah, there you go. Keep
23 going. There you go, you got it. Okay. No, no, no, to the very
24 last page. That one right there, that page.

25 A. Okay. This page.

1 Q. That's it. Okay, and I highlighted the middle of the
2 page, it says, "I have read this sealed supplement and
3 carefully reviewed every part of it with my attorney. I
4 understand it and I voluntarily agree to it. I do not wish to
5 change any part of it. I am completely satisfied with the
6 representation of my attorney."

7 You read that before you signed it, right?

8 A. Yes.

9 Q. Okay, and you signed, you signed there, correct?

10 A. Yes.

11 Q. And that was also on May 11, 2021, correct?

12 A. Yes.

13 Q. All right. And below that it says, "I am the defendant's
14 attorney. I have carefully reviewed every part of this sealed
15 supplement with the defendant," that's you, right?

16 A. Yes.

17 Q. Okay. "The defendant advises me that the defendant
18 understands and accepts its terms. To my knowledge the
19 defendant's decision to enter into this agreement is an
20 informed and voluntary one." And Ms. Oyer signed that, right?

21 A. Yes.

22 Q. Okay. And then after you signed and went over this
23 agreement, I believe you said you went to court, you went in
24 front of a male judge, right?

25 A. Yes.

1 Q. Was this in person or was that by video?

2 A. It was in person.

3 Q. And Ms. Oyer was there with you, right?

4 A. Yes.

5 Q. And the judge asked you many, many questions about the
6 agreement, correct?

7 A. Yes.

8 Q. Okay. And went over the agreement with you, right?

9 A. Yeah.

10 Q. Okay. And also went over the cooperation part of the
11 agreement with you, right?

12 A. Yes.

13 Q. Okay. And you told the judge before you entered the
14 agreement and pled guilty that you understood the agreement,
15 right?

16 A. Yeah.

17 Q. Okay. So to get down to brass tacks, the agreement says
18 if you cooperate you might get a lower sentence, right?

19 A. The agreement, the agreement on this -- that I signed
20 says when I cooperate there's no guarantee for me to get the
21 lesser sentence. It all depends on the judge. My lawyer, my
22 lawyer, my lawyer -- I'm not family with her. But all I know
23 is there was no guarantee that if I get this agreement I will
24 have a lower, a lower sentence. But all I know about this
25 piece of paper is for me to stick to facts. It depends on the

1 judge.

2 Q. Okay.

3 A. It solely depend on the judge.

4 Q. And you don't want to go to jail, right?

5 A. I'm guilty. I'm guilty of all this, of this crime. If the
6 judge deems it necessary to punish me, I will solely accept my
7 punishment.

8 Q. But that's not what I asked you. I asked you, what I said
9 was you don't want to go to jail. It's what you want. Do you
10 want to go to jail?

11 A. It all depends on the judge.

12 Q. Okay. Again, I'm going to ask it a different way.

13 A. It all depends on the judge. I'm guilty of this crime.

14 Q. I'm going to ask it a different way, okay? Do you want
15 to go to jail?

16 A. Excuse me, sir. You're human. You are human.

17 Q. Okay.

18 A. Do you feel pain?

19 Q. So I'm going to ask you questions and you're going to
20 answer, okay? I think that's how we're going to do it, okay?
21 Since we're in court, right?

22 A. Yes.

23 Q. So that's what we're going to do. I'm going to ask a yes
24 or no question. Do you want to go to jail?

25 A. It shouldn't be yes or no question. It shouldn't be yes

1 or no.

2 Q. Okay, I got it. I got it. We're good.

3 A. Like I told you, I'm guilty of this crime.

4 Q. Okay.

5 A. I'm guilty of this crime.

6 Q. Uh-huh.

7 A. My fate depends on --

8 **THE COURT:** It's okay, we'll move on. Next question.

9 **BY MR. BENOWITZ:**

10 Q. Yeah, I think we've heard enough.

11 So now when Ms. Gavin was asking you questions and
12 when Mr. Basile was asking you questions you talked about how
13 one of your main jobs was obliterating serial numbers, right?

14 A. Yes.

15 Q. Okay. Now you didn't -- the charge that you pled guilty
16 to was not to obliterating serial numbers, correct?

17 A. The charge was conspiracy of shipping weapons.

18 Q. Right.

19 A. So by me doing -- by me filing those serial numbers, it's
20 a way for me to hide my crimes.

21 Q. Okay. But what I'm asking you is this: No one said you're
22 charged with obliterating serial numbers, correct?

23 A. Of course.

24 Q. Okay. And you know that obliterating a serial number
25 carries up to five years for each weapon, correct?

1 A. I didn't know that.

2 Q. You didn't know that? Okay. No one told you that?

3 A. No one told me. I didn't know that. I didn't even know --
4 I didn't even know that shipping weapons overseas in the
5 United States without proper documentation was a crime. I
6 didn't even know.

7 Q. Okay.

8 A. But now I know why I'm in this trouble.

9 Q. When I asked you before about the 25 weapons that were in
10 the statement of facts and you said you weren't sure as to how
11 many you had obliterated the serial numbers on --

12 A. Yes.

13 Q. Is it fair to say you obliterated more than 10?

14 A. Sure.

15 Q. Okay. And you said it took you about what, five minutes a
16 piece to obliterate them?

17 A. I said up to five minutes. I didn't specify five
18 minutes. I said it might take three minutes, four minutes. It
19 depends on the --

20 Q. Up to five minutes?

21 A. It depends on the steel.

22 Q. Okay, sure. So up to five minutes?

23 A. Yeah.

24 Q. Is it fair to say maybe you obliterated up to 15 serial
25 numbers?

1 A. No, no.

2 Q. Okay.

3 A. Like I said, like I said, we were coming there in
4 different shifts. I might come this weekend, next week I
5 might not come, somebody else might come because there are
6 many of us. I don't know in my absence, I don't know who else
7 is doing that job.

8 **THE COURT:** It's okay. You finished.

9 **BY MR. BENOWITZ:**

10 Q. I'm just asking about you, just you.

11 A. Okay.

12 Q. So we're thinking now ten rifles, that's what you're
13 saying, right?

14 A. Come again?

15 **THE COURT:** He said that.

16 **MR. BENOWITZ:** Okay, all right. I have nothing
17 further. Thank you.

18 **THE COURT:** Thank you. Mr. Ivey?

19 **MR. IVEY:** May I have the Court's indulgence for a
20 moment, Your Honor?

21 **THE COURT:** Sure.

22 **MR. IVEY:** No further questions, Your Honor.

23 **THE COURT:** Thank you very much. Any redirect?

24 **MS. GAVIN:** Yes, Your Honor.

25 **R E D I R E C T E X A M I N A T I O N**

1 **BY MS. GAVIN:**

2 Q. Mr. Muma, you were asked a lot of questions by Mr. Basile
3 about what year you did what and how many times you went to
4 the lab and what year. Do you remember all that?

5 A. Yes.

6 Q. Okay. And you were asked about 2019 and I think at one
7 point you said you were not doing anything in the group in
8 2019. Do you recall indicating that?

9 A. Yeah, but I'm not -- like I said, I'm not -- the period
10 of time that we did what we did, it spans from 2017 to '18,
11 maybe '19. I can't really remember.

12 Q. Okay, well let me show you what we looked at before,
13 Government's Exhibit 35N. And do you recall -- we can blow
14 this up a little bit if you don't mind, Mr. Gasque. If you can
15 see the dates on here we talked about --you recall testifying
16 about this, this is when your number was added to the chat
17 group that we then talked about a little bit more. Do you
18 remember this?

19 A. Yeah, 2019.

20 Q. And that's February of 2019. Do you see the dates at the
21 bottom?

22 A. Yup.

23 Q. And do you remember with Government's Exhibit 25K, the
24 second page of -- you talked about that receipt of one of the
25 times that you all were shipping a compressor or generator and

1 what's the date up there at the top of that one?

2 A. The date is yeah, 2019, yeah, yeah.

3 Q. Does that refresh your recollection as to whether you
4 were still engaged in the conspiracy in committing acts in
5 2019?

6 A. Yes, yes.

7 Q. And you were still going to the basement in that time
8 period?

9 A. Yes.

10 **MS. GAVIN:** Nothing further, Your Honor.

11 **THE COURT:** All right.

12 **MR. IVEY:** Just Court's indulgence for just a
13 moment, just based on the last question.

14 **THE COURT:** Okay.

15 **MR. IVEY:** Can you put that last exhibit up again?
16 I think it was the receipt.

17 **MS. GAVIN:** 25K?

18 **R E C R O S S - E X A M I N A T I O N**

19 **BY MR. IVEY:**

20 Q. At the bottom of that, that says Cletus Fonguh. Is this
21 your handwriting?

22 A. No.

23 Q. Okay, so you don't know who Cletus is then?

24 A. No, I don't know who Cletus is. This receipt was given to
25 me by the ship -- the guy that was responsible for the

1 shipment that I paid him off and then he give me the receipt.
2 That's how I executed the payment.

3 **MR. IVEY:** Okay, nothing further.

4 **THE COURT:** Thank you very much, sir. You are
5 excused. You can step down. Thank you.

6 **(Witness excused.)**

7 **THE COURT:** I'll just ask the Government whether you
8 have a brief witness or would this be a good time for the
9 lunch recess?

10 **MS. GAVIN:** It's really up to the Court. My direct
11 of the next witness would probably be 15 to 20 minutes, at
12 most.

13 **THE COURT:** Okay. Why don't we go ahead then and
14 start that.

15 **MS. GAVIN:** The Government calls Alex Douville.

16 **THE CLERK:** Please raise your right hand.

17 **(Witness, sworn.)**

18 **THE CLERK:** Please be seated. Please speak directly
19 into the microphone. State and spell your full name for the
20 record, please.

21 **THE WITNESS:** Sure, my name is Alex Douville.
22 A-l-e-x D-o-u-v-i-l-l-e.

23 **THE CLERK:** Thank you.

24 **D I R E C T E X A M I N A T I O N**

25 **BY MS. GAVIN:**

1 Q. Mr. Douville, where do you work, please?

2 A. I work at the Directorate of Defense Trade Controls which
3 is an office in the political military bureau of the State
4 Department.

5 Q. How long have you worked at the Directorate?

6 A. Yeah, DDTC, yeah. I worked there for going on 12 years.

7 Q. So we will refer to that, to the office that you just
8 mentioned as the DDTC, correct?

9 A. Yes.

10 Q. And what's your current position there at the DDTC?

11 A. I am the division chief for Division VI.

12 Q. And how long have you held that position?

13 A. Full-time I've been there for going on -- in a week it
14 will be a year. But before that I was acting division chief
15 for about four years.

16 Q. And just generally before we get to your specific
17 position, what does the DDTC do?

18 A. The DDTC -- well, to step back a little bit, the Arms
19 Export Control Act which was passed by Congress in 1976
20 basically authorized the president to control the commercial
21 exports and temporary imports of defense articles and defense
22 services. That was passed -- that was authorized by the
23 president. The president delegated that to the secretary of
24 state and the secretary of state then delegated that down to
25 our office, DDTC and our deputy assistant secretary. So our

1 office implements the regulations and passed at the same time
2 as the AECA, the Arms Export Control Act was the International
3 Traffic and Arms Regulations which we call the ITAR. The ITAR
4 are the implementing regs of the Arms Export Control Act. So
5 everything that a person needs to know about exporting
6 firearms or exporting defense articles and defense services
7 outside of the country is contained in those regs, including
8 how to register, how to -- what a license is. There's
9 procedures and policies, there's criminal and civil penalties,
10 brokering. It's all in there. And also contained in that
11 ITAR is the United States Munitions List, the USML.

12 Q. And what is the USML?

13 A. The USML is a list of 21 separate categories of all the
14 articles that the U.S. Government deems as defense articles.
15 So there's 21 categories and the categories range from
16 aircraft, to navel vessels, space and missiles, firearms,
17 ammunition, vehicles and whatnot.

18 Q. Now if an item is on the munitions list, what does that
19 mean in terms of sending an item that's on the munitions list
20 out of the country?

21 A. Well, if that article is contained on the United States
22 Munitions List, the USML, then the person exporting that,
23 either a person or a company would need to be registered with
24 DDTC as an exporter and/or a manufacturer. A manufacturer of
25 defense articles even if they don't intend to export anything

1 also need to be registered with DDTC as well.

2 Q. Okay. And if a person or a company wants to export an
3 item that is on the USML, what are the steps, generally that
4 need -- what's required to be on the --

5 A. Basically what happens is the exporter or person that
6 wants to engage in this activity would need to consult the
7 USML, the United States Munitions List to see if the article
8 that they want to sell or export is contained on that list. If
9 it's on that list, then they will need to register with the
10 DDTC.

11 Once they're registered, then they would need to
12 sign up for an online computer program called Dex which is
13 their external online gateway of submitting licenses. They
14 submit the licenses. They need to get -- every export would
15 need to have a purchase order and end user statement from the
16 foreign party stating what they're going to do with the
17 articles and where they're going. And actually all the
18 parties involved in the transaction would need to be on the
19 license as well. So they would gather all that material and
20 they would submit a license. And once that license gets
21 submitted on the Dex system --

22 Q. Can I stop you? You said "submit a license." Do you
23 mean a license application?

24 A. Sure, yes, sorry. A license application. They submit an
25 application to get a license to export a defense article.

1 Q. Okay, great.

2 A. So they would submit that through their computer system
3 called Dex which then gets downloaded twice daily to the
4 system that we use which is called U.S. Exports. And once it
5 gets into our system, then the cases get distributed to one of
6 four teams. And I am the division chief of one of the teams.
7 My team is the small arms and light weapons team which gets
8 cases for categories 1, 2 and 3 which is firearms less than --
9 well, firearms that are up to and including .50 caliber or
10 12.7 millimeters. Category 2 which is anything above that,
11 like anything bigger than that 30 millimeter or Howitzers or
12 cannons. Category 3 which is ammunition for those articles and
13 then a couple others which is training and --

14 Q. One thing to clarify, your testimony about the various
15 categories and the process, was that true in 2017 through 2019
16 into 2020? Was that sort of how the categories were set up?

17 A. Yes.

18 Q. And once -- the application you said gets signed out to a
19 person in the office, correct?

20 A. Yes.

21 Q. What then happens?

22 A. Yeah, so cases come in and they're assigned to a team. So
23 I get the cases and I assign them to one of my analysts to
24 work. So when a case comes in, they will review, they will do
25 a regulatory review and an administrative review. The

1 administrative review is to make sure that all the correct
2 paperwork has been submitted and all of the forms have been
3 filled out correctly, they're not missing any information. If
4 it passes that review, then we do the regulatory review. So
5 then we will look at it as in terms of who is getting the
6 article, who the end user is, who the applicants are, what
7 parties are involved, what the commodity is and where it's
8 going. And based on all that information we staff the case out
9 to other agencies within State Department or outside like
10 Defense Department and others to review the case for a
11 national security and foreign policy review.

12 So we staff out those agencies and they will provide
13 their positions back to us. If they have conditions, they can
14 -- they will tell us what they feel, whether they agree or not
15 agree with exporting this to that specific end user and
16 country and it comes back to us and then we adjudicate. We
17 will take all the positions, aggregate them and adjudicate the
18 final position.

19 Q. And once the final position is adjudicated, what happens?

20 A. So there's four things that can happen with the case or
21 an application for the case. We can either approve it straight
22 up, we can either approve it with conditions basically meaning
23 that there are some stipulations on the license. We can RWA it
24 which is return without action in the case which means that
25 there's something wrong with the case. Usually that's

1 paperwork or it's missing some forms or whatever or we can
2 deny the case outright for foreign policy or human rights
3 concerns.

4 And then -- I'm sorry, and then once we determine --
5 we call it adjudicated, we will issue the case, close it out
6 and it gets sent back to the applicant through the computer
7 system and it will reappear in their Dex system where they can
8 go in it and view the case and find out what happened.

9 Q. So what's the purpose for these processes that you have?

10 A. Well, our main purpose as an organization as a regulatory
11 body within the State Department is to ensure that all direct
12 commercial sales exports of defense articles are consistent
13 with the U.S. foreign policy and national security concerns.
14 We don't want these articles getting into the wrong hands.

15 Q. Okay. Now in this case, were you -- actually, let me ask
16 it this way: Does your office also conduct reviews at the
17 request of law enforcement?

18 A. Yes.

19 Q. Okay, and can you describe how that comes about?

20 A. Yes, we have -- our office, DDTC is divided into three
21 separate offices which is the Office of Compliance, there's
22 the Licensing Office which I work for and then there's the
23 Policy Office which does the regulatory, they rewrite the laws
24 and stuff like that.

25 And so as part of compliance, there is a law

1 enforcement liaison team which receives requests from law
2 enforcement to check if people have been registered, if
3 there's been license history and stuff like that. So then it
4 goes to them. And then the policy people also as part of the
5 policy there's a CJ team, Commodity Jurisdiction team which
6 basically takes -- if there's any doubt as to whether a
7 defense -- an article that you have or a manufacturer has that
8 is or is not on the USML, then they can submit a form
9 basically with all their information about how it was made and
10 why it was made. And there's a team on the policy team which
11 will adjudicate that request and tell them whether it's on or
12 not on the USML list.

13 Q. So essentially indicating whether it's a defense article
14 or not within the meaning of the law?

15 A. Yes.

16 Q. Now you mentioned that your group covers small arms and
17 other things. And are Category 1 and Category 3 items
18 included in that review?

19 A. Yes.

20 Q. About how many applications would you say your office
21 receives, your group, per year, for Category 1 and Category 3?

22 A. Last year my team adjudicated just about 3,000 cases.

23 Q. Now prior to your current position, have you held any
24 other positions within the DDTC?

25 A. Yes, I was on Division 3 which is the Space and Missile

1 team and before that I was on the Response team which is a
2 separate little -- it's basically a call center where it's not
3 24/7, but it's daily -- there's a group of people that take
4 general correspondence -- not correspondence, general inquiry
5 calls from anyone that can call the number and we will help
6 them with general questions about export trade controls or
7 registration or how to set up, you know, anything basically.

8 Q. Are you aware of any other ways, any other public
9 information if someone wants to find out how to export?

10 A. Yes. Our office has a public facing website and on that
11 website you can get -- it's split up so it tells you if your
12 -- it asks you whether if you're new to export trade and it
13 tells you information about how to register. It gives you
14 information about how to submit a license, how to sign up for
15 the computer system, the Dex system. It has links to the
16 response team which is a call center, but they also send
17 e-mails to them. There's also a help desk team which is a help
18 desk for IT issues for if you can't set up the computer and
19 stuff like that. And it also has a link to the ITAR, the
20 International Traffic and Arms Regulations which is basically
21 the Bible of all the regs that we use. That is the official
22 ITAR that is on our website so you can go there for free and
23 you can look that up.

24 Q. Okay. Now directing your attention to Category 1A of the
25 USML, what types of items are in Category 1A?

1 A. Category 1A then was non-automatic and semi-automatic
2 firearms up to and including 12.7 millimeter or .50 caliber.

3 Q. And one thing I failed to ask with the defense articles
4 and the USML, these regs and these categories, do they apply
5 regardless of the intended destination of the item?

6 A. Yes. We don't base whether an article is a defense
7 article based on destination. It's based on the use and the
8 intended use of the article itself.

9 Q. And Category 1H, do you know what that includes?

10 A. Yes, Category 1H is basically a catch-all for all parts
11 and components not covered in other subcategories within the
12 -- within Category 1 of firearms.

13 Q. Does that include magazines?

14 A. Yes.

15 Q. And directing your attention now to Category 3A, what is
16 covered by Category 3A?

17 A. Category 3A is ammunition for articles covered under
18 Categories 1 or 2.

19 Q. And what is Category 2, just --

20 A. Category 2 is basically firearms greater than 12.7
21 millimeter, but greater than .50 caliber. So anything higher
22 than that like a 20 millimeter cannon or even up to Howitzers
23 and cannons.

24 Q. Now in connection with your duties, were you asked to
25 undertake a license check and registration check for any

1 particular individual names?

2 A. Yes.

3 Q. I'm going to show you what's been marked as Government's
4 Exhibit 91. And do you recognize that list of names that's
5 titled Attachment B, license and registration check requested
6 for the following?

7 A. Yes, I do.

8 Q. And do you recall about when you were asked to conduct
9 this check?

10 A. I was asked to conduct this check -- well, I know we have
11 a team of people in DDTC that does these checks and I know
12 that a review was done to check on these names prior to me,
13 but then I physically sat down last week and did another
14 check.

15 Q. Okay, so sometime before?

16 A. To validate.

17 Q. Some sometime before a check had been done?

18 A. Yes.

19 Q. And the check you did this past week you ran the same
20 names?

21 A. Yes, I ran the same names and I basically did the same
22 check that they did just to revalidate the information.

23 Q. And these names that are listed and they're on the screen
24 so I won't read them all, does your check -- how do you run
25 the check? Just generally.

1 A. We basically run the check through a database. We use our
2 database technicians. Our IT staff and myself went through
3 every name on this list. We did last name, first name and
4 iterations thereof for different spellings for these names to
5 make sure that they captured them all.

6 Q. And the database, what types of information is contained
7 in this database?

8 A. All the information from the supporting docs and from the
9 licensed applications on the computer systems are contained in
10 that database that has names of the applicants, has all the
11 foreign parties, it has all the registrants, it has all the
12 subsidiaries, freight forwarders and users, all of that.

13 Q. Does it include applications that may have been denied or
14 returned?

15 A. Yes. Every application like I said before, either the
16 ones that we've approved, approved with conditions, rejected
17 or denied, all those licenses are still in the system.

18 Q. How far back in time does the database go?
19 Approximately.

20 A. The database goes back a couple decades, at least, if not
21 longer.

22 Q. Now when you ran this check, what, if anything, did you
23 find on these names?

24 A. Our check came up that none of these names were in our
25 system.

1 Q. And what did that mean to you?

2 A. That means that none of these individuals or the one
3 company on the bottom had either registered with us, with
4 DDTC, either actively now or in the past and none of them had
5 applied for or tried to get a license.

6 Q. Now have you -- you had an opportunity or have you had an
7 opportunity to review the superseding indictment in this case?

8 A. Yes.

9 Q. And did that include Attachment 1 that contained a list
10 of items?

11 A. Yes, it did.

12 Q. And were you able to make any determination from the list
13 of items on Attachment 1 of the superseding indictment as to
14 whether those were items that were on the USML at any time
15 between 2017 and 2019?

16 A. Yes.

17 Q. And what did you find?

18 A. Most of those articles were Category 1A. There was one
19 category for ammunition which was category 3A and the
20 magazines were category 1A.

21 Q. So in terms of the items that were on this list, were all
22 of them on the USML just they had these various categories,
23 they were in various -- all the items were on the USML?

24 A. Yes.

25 Q. And then there were some in Category 1A as firearms?

1 A. Yeah, most of them were firearms.

2 Q. And then you said there were magazines under Category H
3 and ammunition under Category 3A?

4 A. Yes.

5 **MS. GAVIN:** Nothing further, Your Honor.

6 **THE COURT:** Okay, thank you. Mr. Ivey, were you
7 going to have any questions?

8 **MR. IVEY:** I do. I would guess 20 minutes or so.

9 **THE COURT:** All right, and there may be some other
10 questions so I think we'll have to take the lunch break. It's
11 a little bit after 1:00, so we'll have to ask the witness to
12 come back, but we will do that at 2 o'clock, if everyone could
13 be back at 2 o'clock. Thank you very much.

14 And let me just remind the jury on your way out,
15 please as I keep on telling you, but don't do any research,
16 don't discuss the case, don't even talk about it among
17 yourselves. It's very important to keep an open mind so just
18 don't talk about the case. And other than that, have a good
19 lunch and we'll see everybody at 2 o'clock.

20 **(Jury exited the courtroom at 1:04 p.m.)**

21 **THE CLERK:** All rise. This Honorable Court now
22 stands in recess.

23 **(Lunch recess was taken from 1:04 to 2:01 p.m.)**

24 **THE COURT:** Let's get the witness on the stand.

25 **(Jury entered the courtroom at 2:02 p.m.)**

1 **THE COURT:** All right, everyone can be seated.

2 Welcome back. Mr. Ivey.

3 **C R O S S - E X A M I N A T I O N**

4 **BY MR. IVEY:**

5 Q. Thank you, Your Honor. Good afternoon, sir.

6 A. Good afternoon.

7 Q. Just a couple preliminary questions. So you've been at
8 the state in charge of which unit is it that you're --

9 A. Division 6.

10 Q. Okay. And Unit 6 handles what items?

11 A. Small arms. We handle the Categories 1, 2 and 3, 9, 10
12 and 14.

13 Q. All right, and the range you talked about, I think that
14 the bigger end ended up at Howitzer?

15 A. For my category?

16 Q. Yeah.

17 A. Yeah, Howitzer for the big one, Category 2. Anything
18 above that.

19 Q. And the small arms I guess, are the ones that you talked
20 about that were in Exhibit 1 that's attached to the
21 indictment, are those considered small arms or some are and
22 some aren't?

23 A. They're all small arms.

24 Q. They're all small arms. And so just for purposes of
25 orientation, there was a point where the regulation of small

1 arms after this case, but March 23, 2020 was moved to the
2 Department of Commerce; is that right?

3 A. Yes, March 9th.

4 Q. March 9th?

5 A. 2020, the latest rule of export control of form went
6 through. Export control of form is a wide-ranging review of
7 the USML that the Government did starting in 2012. They
8 started moving stuff that the U.S. -- basically we had 87,000
9 cases in 2012 and that was -- they felt that that was too many
10 cases. And so they wanted to get rid of the stuff, small
11 parts and components of the categories to remove the stuff
12 that the U.S. Government -- they wanted to control the higher
13 -- they wanted basically higher walls around bigger items. So
14 they wanted to get rid of the small parts and components of
15 most of the categories and leave the remaining stuff as the
16 stuff that's basically the crown jewels.

17 Q. So the crown jewels that you were left with were I think
18 --

19 **MS. GAVIN:** Objection, Your Honor, relevance. We're
20 talking about changes in the law that occurred in 2020.

21 **THE COURT:** I assume that we're getting somewhere.

22 **MR. IVEY:** Yes, Your Honor.

23 **THE COURT:** Relevance shortly, go ahead.

24 **BY MR. IVEY:**

25 Q. So the crown jewels you are left with, submarines,

1 missiles and those sorts of items, correct?

2 A. And automatic weapons. Automatic firearms.

3 Q. All right. And for purposes of this, if I could have
4 Exhibit 91, please. Oh I'm sorry, not Exhibit 91. I want
5 Exhibit 1. Are you able to see this weapon, sir?

6 A. Yes, I can.

7 Q. This is already in evidence. Is this the kind of item
8 that would have been moved or is this still something you
9 regulate now?

10 **MS. GAVIN:** Objection, Your Honor.

11 **THE COURT:** Do you want to put on the telex?

12 **(Private conference ensued.)**

13 **THE COURT:** Mr. Ivey, can you hear me?

14 **MR. IVEY:** I'm asking questions about what they
15 still cover. He testified a moment ago that they handled 3,000
16 cases. The testimony I reviewed that the Government sent
17 pretrial was that they had reviewed 14,000 cases. And so I'm
18 just trying to get a sense of what they're covering and --

19 **THE COURT:** But does this relate to the time period
20 of the conspiracy or are we still talking about 2020 which I'm
21 not sure why we're talking about 2020.

22 **MR. IVEY:** The 14,000 was from 2019. I don't think I
23 have a number from 2018. But I was going to try and figure out
24 what that number would be and why it's changed. And I believe
25 the 2003 number was from this year and was elicited by the

1 Government.

2 **THE COURT:** The 2003 number? There was a reference
3 to 3,000.

4 **MR. IVEY:** 3,000, but that was referenced to last
5 year, 2021. I only have a few --

6 **THE COURT:** I just don't -- what is the -- I'm just
7 missing it.

8 **MS. GAVIN:** Your Honor, showing them a weapon and
9 suggesting --

10 **THE COURT:** I'm sorry what, Ms. Gavin?

11 **MS. GAVIN:** I was going to say it goes beyond that
12 in terms of showing weapons and asking whether these are
13 things that got moved to the Commerce Control List in 2020 is
14 totally irrelevant and I think unfairly suggests to the jury
15 that somehow this wasn't really a crime back then and it is.
16 It was a violation of the law at that time.

17 **THE COURT:** Right.

18 **MR. IVEY:** I haven't said that it wasn't. In fact,
19 that was -- I thought the lead point was that, you know, I
20 just wanted to get a sense of what was the present -- what was
21 being regulated presently and what --

22 **THE COURT:** I'm still not hearing any relevance to
23 what's being regulated presently. So I'm sustaining the
24 objection.

25 **MR. IVEY:** All right.

1 (Private conference ended.)

2 BY MR. IVEY:

3 Q. So in 2018, 2019 looking at Government Exhibit 1A, these
4 are the kinds of weapons that you would have been reviewing
5 prior to the time that licenses would have been granted?

6 A. Yes.

7 Q. Okay. And I believe I saw that your testimony was that
8 you have reviewed about 14,000 applications during that time
9 period?

10 A. What time period?

11 Q. 2019. At least that was the year of your testimony.

12 A. Yeah, 2019, the firearms' team did about 13,000 cases,
13 roughly.

14 Q. All right. And what percentage of those applications were
15 granted?

16 A. On average for -- it's hard to say for that category, but
17 I know for all of licensing, the total -- it's about 81
18 percent of all cases are either approved or approved with
19 provisos. We RWA about 18 percent and we deny one or two
20 percent.

21 Q. And you said "RWA." What does that stand for?

22 A. Return without action. That's cases that we return for
23 administrative errors or errors in paperwork.

24 Q. That's one of the four categories you testified about
25 before?

1 A. Yes.

2 Q. With the fourth category being outright denial?

3 A. Yes.

4 Q. All right. Now let me ask you, if most of those
5 applications were submitted by companies or businesses, is
6 that typically what you get coming through your shop?

7 A. Most, yeah. Most cases come through companies, I would
8 say.

9 Q. Okay. And these would be -- let's stick with weapons, at
10 least during that time frame. Companies that manufacture guns,
11 is that --

12 A. What's interesting with firearms is you do get the
13 manufacturers, but there are also a lot of distributors like
14 your Cabela's and the ones that buy from manufacturers to
15 stockpile and then reexport it to sell. So you get a lot of
16 distributors.

17 Q. And you outlined a process that those entities would have
18 to go through in order to be able to sell them. And the first
19 is to get registration?

20 A. Yes.

21 Q. And what does the registration process entail?

22 A. You have to submit an application and it's a form. You
23 have to submit articles of incorporation. You have to have an
24 empowered official and there's a registration fee. And so you
25 fill out the form and you talk about where your company is,

1 what business you're going to do, whether you're going to be a
2 manufacturer or an exporter or both or a broker and you list
3 your empowered officials, your company employees that are,
4 like, empowered to do business with us and then you list the
5 commodities that you want to manufacture and/or export. The
6 commodities on the USML.

7 Q. And I think you said the officials that are empowered to
8 --

9 A. Empowered official.

10 Q. That interact with your agency?

11 A. Yeah. Those are the ones that -- an empowered official
12 has to submit the license application with us and they have to
13 sign it electronically. They sign the application to state
14 that they are empowered to do business -- to be an employee of
15 the company and they are -- it's like an official of the
16 company and they are liable for anything that goes on in that
17 company with that application.

18 Q. Now I believe your agency also publishes not just
19 regulations, but guidance on how to comply with these
20 requirements?

21 A. With the ITAR requirements?

22 Q. Yes.

23 A. Yes.

24 Q. And part of that would be, you know, that they should
25 review regulations before they move forward or, you know, and

1 prepare the EEI, that sort of thing?

2 A. EEI? What is EEI?

3 Q. I'm sorry, the form that they're supposed to submit to
4 your department as part of the registration process.

5 A. So you're saying, yeah, there's online instructions about
6 how to fill out those forms.

7 Q. Okay. And then the next step there would be -- they'd
8 submit the registration request and then it would come to your
9 office. And then how do they get from registrations to
10 licensing?

11 A. So once you get registered, then our registration
12 department will send out a form saying "you are now
13 registered" and it's good for one year. And there's a fee
14 associated with that, but it's good for one year and they can
15 engage in the business of exporting or manufacturing for one
16 calendar year. Once they have that registration, they get a
17 number, a code. It's usually an M code, M number with a dash
18 and a four or five digit number and that is their basically
19 like their Social Security number with us. So they have that
20 number. If they keep on renewing every year, then they'll keep
21 the same number.

22 Once they're registered with us, then they can begin
23 the process to apply for licensing applications and that's the
24 process I outline where they have to go and get -- go online
25 and get a -- log on and register with the Dex system which is

1 our external online portal which they will then use to submit
2 all of their applications to us.

3 Q. All right. And then with respect to -- and you mentioned
4 I guess -- I think you used the term "empowered official" or
5 "individual" who was the one that you would be interacting
6 with on that process?

7 A. Yes.

8 Q. All right. And then once they do all of that, then they
9 can apply for a license?

10 A. Yeah. Well once they have -- once they are signed up
11 with the computer system that they need and once they're
12 registered, then they can, yes, begin to apply for
13 application.

14 Q. And would your expectation be that the same empowered
15 individual who would have handled the early part of this would
16 be seeking the license as well?

17 A. Depends on the nature of how big the company is. Some
18 companies like Raytheon or the bigger defense exporters have
19 an entire compliance team of exporters and so they have many
20 empowered officials. When we're dealing with a small what we
21 call Mom and Pop organizations which is a small company, then
22 those people are, you know, there's only one or two people
23 that engage in export, in export licenses. So it really
24 depends on how big the company is and who the owner of the
25 company wants to list as an empowered official.

1 Q. Okay. And then let's say there's a finding of a violation
2 of whatever the license requirements are. Typically -- I
3 think you mentioned liability with respect to the officials
4 who had been involved in the registration and in the process
5 interacting with your agency; is that correct?

6 A. Yes.

7 Q. All right. Let's say this company has a warehouse or
8 other officials who just do the process with firearms. They
9 load the firearms for shipping. Would your agency normally be
10 holding the warehouse people accountable for the error that
11 was committed with respect to the licensing process?

12 **MS. GAVIN:** Objection, Your Honor.

13 **THE COURT:** Sustained. Don't answer.

14 **THE WITNESS:** Don't answer? Okay.

15 **BY MR. IVEY:**

16 Q. Let me ask you this, do you regulate nonprofit entities
17 that are trying to send weapons or items overseas as well?

18 A. Yes. Anybody who exports from the United States would
19 need to be registered with us.

20 Q. Do you treat those differently than the commercial
21 entities?

22 A. No.

23 Q. All right, and so if you had a group -- and I guess that
24 could run the gamut, it could be a formal like a corporate
25 structure, but a very small entity or it could be a 501(c)(3)

1 perhaps?

2 A. Yes.

3 Q. Maybe a church?

4 A. Anyone who wants to export firearms.

5 Q. Okay. And the same requirements would apply? You'd have
6 somebody who is required to do the registration piece?

7 A. Yes. I mean, you would need to register, so some --
8 depending on what kind of organization it is, they may run
9 afoul of if they are not incorporated, because there are
10 requirements to be incorporated with -- to apply for
11 registration you've got to be incorporated and you have to
12 have certain benchmarks. And so some companies may not be
13 incorporated. So they may not be able to register. If they
14 can't register, then they won't be able to export.

15 Q. Okay. And are shipping -- or freight forwarder or
16 shipping companies able to -- what role do they play in this
17 process?

18 A. Some of them are registered because they sometimes for
19 their clients need to get export licenses on a case-by-case
20 basis, rarely. But usually all parties to a transaction need
21 to be listed on our license applications. So freight
22 forwarders, foreign and US would need to be provided on the
23 license. If you're using a freight forwarder, it would need to
24 be on our licenses.

25 Q. And the entity that was using the freight forwarder or

1 hired them or retained them, that name of the entity or group
2 would have to be on that as well?

3 A. Yes. All parties to the transaction need to be on the
4 license. If they're not on the license and they're on the
5 supporting documents or if we find out that they are part of
6 it, that's grounds for a return without action.

7 Q. All right. And what if it's a volunteer arrangement where
8 people are donating items to be shipped? So let's stick with
9 our church. So people -- whatever serious event there is,
10 people donate items to be shipped overseas. Then the church
11 then hires a freight forwarder and then they can send it
12 overseas, is that possible?

13 A. It's --

14 **MS. GAVIN:** Objection.

15 **THE COURT:** Sustained.

16 **MR. IVEY:** Can we be heard, Your Honor?

17 **THE COURT:** Are we getting back to --

18 **(Private conference ensued.)**

19 **THE COURT:** Can you hear me?

20 **MR. IVEY:** Yes.

21 **THE COURT:** Ms. Gavin?

22 **MS. GAVIN:** Yes.

23 **THE COURT:** What I don't understand, Mr. Ivey, is
24 that he's already answered a couple of times that any
25 organization that's exporting the firearms has to have this --

1 you know, be registered and have a license.

2 MR. IVEY: Yeah, the immediate question is -- okay,
3 I'll stop there.

4 THE COURT: Okay.

5 (Private conference ended.)

6 BY MR. IVEY:

7 Q. So any entity that wants to export needs to get the
8 license?

9 A. Yes, they need to get registered and then get a license.

10 Q. And it can be an entity that is not a formal corporation,
11 but something less formal? Could be a mom and pop structure,
12 right?

13 A. Yeah, I mean --

14 Q. Or it could be a charitable organization?

15 A. Yes.

16 Q. Or volunteer entity?

17 A. Yes. I've seen all of those, yes.

18 Q. All right. Now in this particular case, on your -- I
19 think that was Exhibit 91, if we could pull that up. Let me
20 ask you about number 12, the Bonaberi Shipping & Moving. I
21 think you testified that you did a check and they came up with
22 no registration or license with respect to that entity?

23 A. Yes.

24 Q. Now is that only registration with respect to USML
25 shipping or is it across the board Federal Government?

1 A. No, this is for DDTC for defense articles registration to
2 be an exporter or manufacturer.

3 Q. Okay, so your finding doesn't mean that Bonaberi Shipping
4 isn't able -- doesn't have licenses to do shipping under other
5 types of situations?

6 A. Yes, no.

7 Q. Okay. Court's indulgence for a moment?

8 **THE COURT:** All right.

9 **BY MR. IVEY:**

10 Q. All right, so just to close this out, the process where
11 the registration form is filed, is it roughly about 45 days
12 before there's a decision that comes back?

13 A. It depends on whether all the documents and all the
14 information is correct. I would say -- hard to say how long it
15 would take, but roughly one to two months.

16 Q. One to two months, okay. And then after that period has
17 passed if there's an acceptance, they could file for a license
18 application with DDTC?

19 A. Yes, as soon as they get the letter from our registration
20 department with their registration code, that means they are
21 active and they can then apply for licenses.

22 Q. Okay. And then if your agency agreed they would obtain
23 the licenses for the shipping?

24 A. Yeah. Well, if you submitted an application and it
25 passed all regulatory and administrative review then yes, we

1 would adjudicate that case and send it back to the applicant.

2 Q. And then they could coordinate with the freight
3 forwarder?

4 A. Yeah, if they were listed on the license then they could
5 interact with the freight forwarders listed on the license to
6 export the articles.

7 Q. And then they would be able to ship the items?

8 A. Yes.

9 Q. Okay. No further questions, Your Honor.

10 **THE COURT:** All right, thank you. Anyone else?

11 **MR. BASILE:** No, Your Honor.

12 **MR. BENOWITZ:** No, Your Honor.

13 **THE COURT:** Any redirect?

14 **MS. GAVIN:** No. No questions, Your Honor.

15 **THE COURT:** Okay, thank you very much, sir. You're
16 excused.

17 **(Witness, excused.)**

18 **THE COURT:** Does the Government have another witness?

19 **MR. MIHOK:** Yes, Your Honor. We'll call Mr. Ronald
20 Rolfe to the stand.

21 **THE COURT:** I'm sorry, counsel, could we just go on
22 the telex for one second?

23 **(Private conference ensued.)**

24 **THE COURT:** Can you hear me, Mr. Mihok? I just want
25 to be sure that Mr. Rolfe, if he's going to be asked the

1 purpose of the law has had the same warning that Mr. Douville
2 did.

3 **MR. MIHOK:** Absolutely, Your Honor.

4 **THE COURT:** Thank you.

5 **(Private conference ended.)**

6 **THE COURT:** Sorry, go ahead. Just come right up
7 here, sir.

8 **THE CLERK:** Please raise your right hand.

9 **(Witness, sworn.)**

10 **THE CLERK:** Please be seated. Please speak directly
11 into the microphone. State and spell your full name for the
12 record, please. Sir, state and spell your full name for the
13 record, please.

14 **MR. MIHOK:** State and spell your full name.

15 **THE WITNESS:** Oh, my name is Ronald Rolfe.
16 R-o-n-a-l-d R-o-l-f-e.

17 **THE CLERK:** Thank you.

18 **MR. MIHOK:** Thank you.

19 **D I R E C T E X A M I N A T I O N**

20 **BY MR. MIHOK:**

21 Q. Good afternoon, Mr. Rolfe. Where do you work?

22 A. U.S. Department of Commerce down at 14th and
23 Pennsylvania.

24 Q. And what specifically is your title or what do you do
25 there at the Commerce Department?

1 A. I'm a licensing officer in the nonproliferation and
2 treaty compliance office, working in the nuclear missile and
3 GAQs for that doing performing licenses, classifications,
4 other topical interests.

5 Q. And how long have you worked with the Commerce
6 Department?

7 A. For 33 years.

8 Q. And are you familiar with the Bureau of Industry and
9 Security?

10 A. Yes, that is part of the Bureau of Industry and Security.
11 We are the responsible party for exporting the majority of
12 goods out of the country that are dual-use in nature.

13 Q. And what does that mean, "dual-use in nature"?

14 A. Well, that they can be used -- they're not just
15 significant items, like munitions items for weapons of war,
16 but they can be used in any number of applications both for
17 commerce applications or for any other type of application
18 that you might need them for. And that's -- they lend
19 themselves to being used for such a variety of goods that they
20 are commonly defined as dual-use goods.

21 Q. And you mentioned "licensing officer," that that was one
22 of your duties or titles and responsibilities. Can you tell
23 the jury a little bit about what that means?

24 A. Yes, a licensing officer will be reviewing any incoming
25 license applications to determine whether the license is

1 needed right off, whether there's sufficient information to
2 determine it and then we'll evaluate the parties, the products
3 in question and process it out, submitting it interagency to
4 state, energy and defense and getting returns back from that.
5 If everybody approves it, then the license will move forward
6 to sign off and a countersigner will do it and we may have to
7 dispute it with the agencies, depending on the party and what
8 is needed and what other concerns are for the destination.

9 Q. And are you familiar with the United States Export
10 Administration Regulations?

11 A. Yes, the Bureau's Export Administrations is a ten
12 category grouping of the various types of products for which
13 we have export control numbers defined in that. They basically
14 break down much like you would in a dictionary. They define
15 the various types of products we control and they provide an
16 as best as possible definitive list and the parameters that
17 capture each control item. We have written it and we keep
18 writing it to make it simpler and simpler so that it's fairly
19 easy to discern products, industry knows it well and we --
20 many people make mistake when reading it, but we walk them
21 through it very carefully and define their products. And we
22 can also provide classifications to companies when they decide
23 to determine whether products are caught and require licenses
24 to go out of the country.

25 Q. And so what is the actual purpose of -- and I'll just

1 refer to it as the EAR, what is the purpose of it?

2 A. The EAR provides a broad breakdown on policies. The
3 requirements going to various countries for the products to
4 which most of industry wants to ship and various -- both these
5 from starting from the beginning, how to submit proper
6 policies, how to get classifications, how to review your own
7 products and the necessary things to do to market it on its
8 way. We also provide listings of known bad end users and other
9 destinations of concern. So we basically have boiled down
10 everything from a large broadband of input from various
11 agencies so that it makes it more of a simpler approach to if
12 you've never shipped to a particular destination or a
13 particular party, you can readily look in it and find whether
14 there's any controls to a particular product going to those
15 destinations.

16 Q. And how do you determine if a license is required to ship
17 a product pursuant to the EAR?

18 A. How do you -- well, we'll review the product in question,
19 see if it matches up with our current control list and if it
20 does, then with sufficient information provided by the party,
21 we will review that, check to see what it is, where it's going
22 and we have a front end review staff that identifies the
23 address of the party in question, validates that they're
24 really there and it's a proper location and the particular
25 company or whatever is in place. And then the placement

1 officer will process it, moving it forward to get approval
2 from the various agencies, review the results that come back
3 and close up the case accordingly and issue the license.

4 Q. And I may have missed it, but you mentioned before the
5 term "dual-use." And just very simply, what did you mean by
6 that, an item that's dual-use?

7 A. Um, you can -- certain types of products are appropriate
8 only for a particular application, but for example, when
9 you're dealing with say machine tools, common machine tools
10 and you've gotten into more sophisticated ones, they make --
11 they do a lot of reproduction of products very precisely so
12 that you get replication and replication of products. You put
13 out quality goods that way. At a certain level, the machine
14 tool can produce particular type of products because of the
15 way it can manipulate stuff that are unique to certain types
16 of industries, whether you use it for producing Swiss watches
17 and stuff like that or it can be used to work in other
18 directions.

19 Q. What do you mean by that? What do you mean by that?
20 Let's just get right to that.

21 A. Well, specific machine tools and they're controlled
22 directly for nuclear proliferation concerns is some -- because
23 they can be -- depending upon what you're making of a nuclear
24 application, it has to be molded and crafted very carefully.
25 Without doing that, the end product won't be very effective or

1 it may be hazardous and dangerous.

2 Q. Got it.

3 **MR. IVEY:** Objection, Your Honor.

4 **BY MR. MIHOK:**

5 Q. So if we could just go to -- if someone had a question
6 about an item and whether or not it required a license to be
7 shipped under the EAR, are there resources available to help
8 them answer that question?

9 A. Yes. Our website which is available online, it's free to
10 review. It compiles the entire EAR in it so that you can
11 thumb through the categories and indeed it has an index in
12 there. So if you're looking for a particular product and you
13 want to check it out, the index -- you can punch in on the
14 index and see if my types of products are made there and they
15 require licenses. So you can do that independently. If not, we
16 have an export services staff, a front-end office for which
17 the numbers are listed out very clearly and you can call in
18 and get a response back from them. If they don't have an
19 answer right out for you, they will generally turn you over
20 directly to a licensing officer like myself and we would speak
21 with you directly, respond back in e-mails and give you all
22 the information you want. Where as far as departments and
23 agencies go, we're the most communicative of anybody because
24 we have the front-end staff that does that. A little time with
25 a particular company and they get to know you very well and

1 they like to respond back.

2 And we also host seminars that our people can attend
3 so that they can update their capabilities accordingly.

4 Q. Are you familiar with export control classification
5 number 0A987.A?

6 A. Yes.

7 Q. And what items generally were on that list as of January
8 17, 2019?

9 A. Commonly defined as optical sighting mechanisms for
10 firearms. So if you have a scope, a variety of different
11 scopes, laser pointers that are used to define a target, all
12 of those items are caught out under that particular ECCN.

13 Q. And did you review Count Three of the superseding
14 indictment and the items that are listed there?

15 A. The particular scopes in question?

16 Q. Yes.

17 A. Yes.

18 Q. And so I'd like to just publish quickly Exhibit 17,
19 please. And do you see a scope associated with this item?

20 A. Yes. That's a common magnifying riflescope which is an A
21 commodity a 0987A. It will have three lenses in it and it will
22 provide magnification, much like you would see in any
23 application of that sort in which it will by adjusting the
24 middle knobs in there, it will magnify and give you, I don't
25 know, between two to five to sixteen times closer in view.

1 Q. And is that a Bushnell Trophy Rifle?

2 A. Yes, the Bushnell has that particular type of function
3 and it has the three knobs on the top or side knobs.

4 Q. And then Exhibit 19, please. And this -- do you recognize
5 19? You've seen that before?

6 A. That looks very much like a Burris, which again has
7 similar adjustment knobs commonly used for certain calibers,
8 but it's an accurate and it's a very durable firearms code.

9 Q. And both of those items, were they on that list as of
10 January 17, 2019?

11 A. Yes, they were.

12 Q. And so if an item such as these we just reviewed here was
13 on that list in one of those categories, what would be
14 required before that item could be exported from the United
15 States?

16 A. You would need a -- because it has an optical lens that
17 enhances capability and it is suitable for mounting on a
18 firearm, you would need a license for this item to many
19 destinations. It is controlled for firearms convention, crime
20 control and UN sanction reasons. And you would evaluate
21 whether or not the country destination that you're going to
22 has any of those controls against it and process it
23 accordingly.

24 Q. And so if these specific items, the Bushnell and the
25 Burris riflescopes were being exported to Nigeria in 2019, was

1 a license required?

2 A. Yes, for those destinations, the only control that is
3 applicable is for crime control, CC1 reasons and it would
4 require a license.

5 Q. And if you could just briefly tell the jury just very
6 briefly, what is involved in applying for and procuring a
7 license if someone wanted to ship this item?

8 A. Actually our method is fairly simple. The entire
9 mechanism is set up electronically. You can go online, set it
10 up, it's free. And as our licenses issued are, they don't
11 cost anything. You would set up an account, put in the
12 information, upload it to us and walk through the process of
13 -- the entire mechanism is really simple.

14 The license would turn up to the particular branch
15 that handles that kind of commodity and then it would be
16 distributed among the licensing officers. They would do the
17 proper referral and evaluation and the case would be signed
18 off by the licensing officer and then countersigned and it
19 would go out in the system to your account, much like you
20 would look at an online checking account. And then you can
21 download the license number for that case and use it for
22 export purposes.

23 Q. And are licenses that are applied for, whether granted or
24 denied, are they stored somewhere in a central database?

25 A. Yes. The current system which we've actually had -- it's

1 been around for better than four decades, it's an updated
2 version of it, but it provides an electronic database on all
3 of the parties involved, all of the items marketed and the
4 various associated concerns or entities and stuff like that.
5 So all of this is in an electronic archival system and you can
6 go back for a particular company name and look it up and find
7 out how much track record they've got and whether it's been
8 favorable or not.

9 Q. Are you able to run checks in that database?

10 A. Certainly.

11 Q. And in this case, did you run certain checks upon
12 request?

13 A. Yes, I did.

14 Q. And I'd like to pull up Exhibit 78. Do you recognize
15 this?

16 A. Yes, I do. An inquiry was made as to whether any of these
17 parties were on the shipping -- our export control system.
18 And I walked through it very carefully and even broke it down
19 as you have to sometimes for a database, looking for
20 variations on the name or separate first and last names and
21 such. Nobody was found. I found no license history, no
22 previous accounts opened as a license applicant and there was
23 literally no material for it, which was a little surprising.

24 Q. And so as a result, what were you able to conclude?

25 A. No license had been submitted to the system.

1 Q. Nothing further, thank you.

2 THE COURT: All right, thank you. Anyone want to --

3 MR. IVEY: Briefly, Your Honor.

4 C R O S S - E X A M I N A T I O N

5 BY MR. IVEY:

6 Q. With respect to -- I'm sorry, good afternoon.

7 A. Good afternoon, sir.

8 Q. With respect to the scopes, I think you mentioned that
9 they are restricted based on the crime control?

10 A. Right.

11 Q. All right. And the question I had was, there appears to
12 be some exceptions to these licenses?

13 A. I'm sorry?

14 Q. There appear to be some exceptions to these licenses?

15 A. There are exceptions to -- every country has particular
16 restrictions to that or controls that are applicable. Some
17 destinations there are no crime control license required.
18 Others, definitely so.

19 Q. All right. And what about with respect to baggage, if
20 someone is traveling. Could they take these scopes with them
21 without getting a license?

22 A. You may take if you're, say, going on a sport trip or
23 hunting and stuff like that, you may take three firearms under
24 BAG which is a license exception. Section 740 of the export
25 administration has license exceptions. That is purely for a

1 temporary transition out and it was coming back with the party
2 in question who takes them.

3 Q. Would that be applicable for these riflescopes?

4 A. It can be done with riflescopes, yes. Although they
5 should be with the firearms in question.

6 Q. Thank you, sir. No further questions.

7 **THE COURT:** Anything else? Mr. Mihok?

8 **MR. MIHOK:** No.

9 **THE COURT:** Thank you very much, sir. You are
10 excused.

11 **(Witness, excused.)**

12 **MR. MIHOK:** Your Honor I would call ATF Forensic
13 Auditor Dave Clemson to the stand.

14 **THE CLERK:** Please raise your right hand.

15 **(Witness, sworn.)**

16 **THE CLERK:** Please be seated. Please speak directly
17 into the microphone, state and spell your full name for the
18 record, please.

19 **THE WITNESS:** My name is David Clemson. I'm a senior
20 forensic auditor with the Bureau of Alcohol, Tobacco, Firearms
21 and Explosives.

22 **THE CLERK:** And state and spell your full name,
23 please.

24 **THE WITNESS:** Sorry, David Clemson. D-a-v-i-d,
25 C-l-e-m-s-o-n.

1 **THE CLERK:** Thank you.

2 **THE WITNESS:** Thank you.

3 **THE COURT:** Mr. Mihok.

4 **MR. MIHOK:** Thank you, Your Honor.

5 **D I R E C T E X A M I N A T I O N**

6 **BY MR. MIHOK:**

7 Q. Good afternoon. You mentioned you work for ATF. How long
8 have you worked there?

9 A. I've been in my current capacity for 21 years.

10 Q. And so does that mean as a forensic auditor?

11 A. A forensic auditor, yes.

12 Q. And what are your duties as a forensic auditor?

13 A. I mainly provide financial assistance to criminal
14 investigations involving arson for profit, firearms
15 trafficking, alcohol and cigarette diversion.

16 Q. And in the course of your duties, what types of records
17 are you typically reviewing?

18 A. Typically we review credit reports, credit cards, bank
19 accounts, money transfer accounts, loans, mortgages, anything
20 financially related.

21 Q. Were you asked to do any forensic auditing of records
22 related to the investigation case that brings us into court
23 here today?

24 A. Yes.

25 Q. And do you recall what financial records you reviewed?

1 A. Credit reports, bank accounts, credit card statements,
2 money transfers like Cash App from Block, things like that
3 that came up we would request.

4 Q. And you mentioned "Cash App from Block." Are you familiar
5 with what Cash App is, just very generally?

6 A. I am.

7 Q. And what is that?

8 A. It's basically a money transfer system. It's kind of a
9 peer-to-peer. If you owe somebody some money you can
10 electronically send the money to them as opposed to having
11 cash. You can set up an account and then you can just transfer
12 the money. It's called peer-to-peer. P to P.

13 Q. And with regard to those records for that application
14 Cash App, were they obtained from a company called Square,
15 Inc?

16 A. Yes.

17 Q. And then later records it changed the name of the place
18 and now it's Block, Inc?

19 A. It is now called Block, correct.

20 Q. And how were you able to obtain those records?

21 A. Through a grand jury subpoena.

22 Q. And so with regard to records from that company, there
23 were more than one batches -- more than one batch of records
24 sought?

25 A. That's correct.

1 Q. And how about that first set of records obtained through
2 grand jury subpoena through a legal process, can you tell the
3 jury a little bit about that?

4 A. Sure. The first one we received was in July -- I'm
5 sorry, December of 2019. At that time the way Cash App
6 responded to their internal records that they responded to
7 grand jury subpoenas, everything that we requested for all the
8 individuals we requested came in one large spreadsheet of
9 about 5,000 lines.

10 Q. And what were you -- what did you have to do to really
11 analyze those records?

12 A. So I had to go through each one and any time that there
13 was a change in account owner, basically an individual, I'd
14 have to extract those and put it in a working file to make
15 sure that I didn't have to every time, go through 5,000 lines
16 to find what I was looking for.

17 Q. And was there a second set of records received from Cash
18 App/Square, Inc?

19 A. There was. That was in July of 2020.

20 Q. And just an overall overview, what were those records?

21 A. Those records, their reporting had been changed a little
22 bit so then I got an Excel spreadsheet for each individual
23 that we requested for. So instead of getting one spreadsheet
24 that had 5,000 lines, we got about 10 to 12 spreadsheets. And
25 depending on the number of transactions dictate how big, how

1 many lines that it was available for.

2 Q. And then there was a -- I'm sorry, approximately when did
3 you receive those records?

4 A. July of 2020.

5 Q. And then did you receive a third set of records from --
6 and now I think it was called Block, Inc?

7 A. Block, yes.

8 Q. And did you receive a third set?

9 A. We did, April of 2022.

10 Q. And what did that third set of records consist of?

11 A. There was about six different spreadsheets for a couple
12 of individuals that we were looking at. Obviously a much --
13 much more manageable compared to what I had looked at
14 previously.

15 Q. And so collectively all these, these three different
16 productions, were you able to analyze all of those records?

17 A. Yes.

18 Q. And did you create some summary exhibits from those
19 records?

20 A. I did.

21 Q. And what were the parameters? What were you looking for
22 in creating these summary exhibits?

23 A. The main thing that we were looking for were individuals
24 that were identified during the investigation or -- and I can
25 explain a little bit more, but there's a subject area that's

1 in there that's kind of like the memo section of a check when
2 you're writing a check and you wrote the memo in there or what
3 the check is for. That's what that subject area is for. So we
4 were looking for not only individuals, but as well as
5 subjects, things put in the subject that we identified during
6 the investigation.

7 Q. So I'd like to pull up Exhibit 30A, please. Okay, what
8 are we looking at here?

9 A. This is the summary spreadsheet.

10 Q. Hold on, we'll make it a little easier on the eyes.

11 A. Okay. Yeah, that probably would be better, yes. So this
12 is basically an extraction from the account owner of the --
13 basically a summary of some transactions that were identified
14 in the larger part of the account, the account transactions.

15 Q. And this particular account in 30A, is this an analysis
16 of one particular account?

17 A. Yes, it is.

18 Q. And who was the owner on the account? Identified as, I'm
19 sorry.

20 A. Identified as Wilson Tita.

21 Q. And so just working left to right there, can you just
22 walk the jury through these columns, please?

23 A. Sure. The first column is the date and time that is
24 provided to us by Cash App. I'll explain it in a minute when
25 we get to it, but as you notice, there's a lot of information

1 in there so it's a little harder -- luckily it was in Excel,
2 but it was harder to sort because of the text information
3 included in it. I'll explain that more in a minute.

4 The next column is the subject area like I had
5 described. That's kind of like the memo section of your
6 check. When you write a check, that's where you would
7 annotate possibly what the transaction is for. Sometimes it's
8 filled in, sometimes it's not, okay? It's not a requirement,
9 but sometimes it is filled in.

10 Going from right to left -- from left to right as
11 the arrow is showing, the next column is the sender. That is
12 the account owner that is sending the money -- I'm sorry, that
13 is the individual that is sending the money to the recipient,
14 which is the next column. So the sender could either be the
15 account owner or the account owner could be the recipient and
16 then somebody else is labeled as the sender. So it just
17 depends on which way the transaction is going.

18 The date column there, as you will see it
19 corresponds to the other one, but to be able to sort these I
20 had to do some formulas and everything to basically just give
21 me a date formula so I could actually look at the dates
22 themselves rather than having all that other stuff in there.

23 The dollar amount is basically the amount that was
24 incurred in the transaction. The amount of money that was
25 actually exchanged. And then the location is something that we

1 added in. It was not in the subpoena return. What that is is
2 for ease for you if you wanted to see that specific
3 transaction, if you went to the original subpoena return from
4 Square, Inc. for their Cash App data, like looking at that
5 first one, for this specific account, it will be in Excel line
6 number 426. You pull that up, you'll see that exact
7 transaction that Cash App provided.

8 Q. And just to be clear here, in the dollar amount column,
9 these are -- what is that reflecting? Are these completed
10 transactions or attempted transactions? What can you tell the
11 jury about that?

12 A. Sure. In the information that we received from Cash App,
13 the section that we're looking at here if you see in the upper
14 left it says "attempted P2P transaction. That's a section
15 within the documents that we received that again, that's that
16 peer-to-peer transactions. But then within that section
17 there's a bunch of different categories, I'll say. The main
18 one that I was concerned with is obviously "paid out." I want
19 to know when money exchanged hands. That's what the paid out
20 represented. And that's the ones that we extracted.

21 There were some other ones in there that were, you
22 know, say "declined" or "exceeds dollar limit" or something
23 like that. These strictly are the ones that were paid out that
24 money was exchanged.

25 Q. And if we could just X out of that. And that first batch,

1 the first several of them are all Mr. Wilson Tita sending, but
2 if we go to the very bottom, the bottom third or so and
3 include the -- and so just so it's clear, some of these
4 transactions included a different sender. Can you take a look
5 and give the jury an example of that?

6 A. Yeah, so if we look at -- I guess the best way to look at
7 it is if you look at the transaction number 107, that was on
8 the flip side, that's where Mr. Tita was actually the
9 recipient of \$200 that came in from a Mr. Mancho.

10 Q. And then in the bottom right just below the Excel
11 spreadsheet, what are we looking at there?

12 A. So those are totals of just this spreadsheet that you're
13 looking at. Again, this is not all inclusive. This is not the
14 entire spreadsheet that we received from Cash App. You'll see
15 those. It's just the transactions that we identified either by
16 people or by subject.

17 The other thing that you'll notice too is in the
18 amounts to kind of help you out a little bit, if there's
19 parentheses around it, that was basically saying that the
20 account owner sent the money. If there's not parentheses
21 around it, it's where they received money. So just to make it
22 a little bit more clear, because when you look at the Cash App
23 stuff, you're not going to see -- in the regular information,
24 you're not going to see the parentheses. I just did it that
25 way to make it a little bit easier to read.

1 Q. So here just briefly then, what was the total just for
2 this spreadsheet, this portion of the extraction from the much
3 larger document you've described which is not in evidence and
4 we're not going to be moving it in.

5 A. Okay.

6 Q. But just so that's clear, but what amount was received by
7 Tita as the recipient?

8 A. \$3,750.

9 Q. And sent by Tita? Just on this spreadsheet.

10 A. Just on this spreadsheet, \$10,460.

11 Q. Total number of transactions?

12 A. In this analysis it was 63 transactions.

13 Q. And so I'm just going to reference and ask the Court
14 under the local rule to admit, it's 30B, 30C, 30D and 30E, as
15 well as 31B, that all of those will be admitted. If we could
16 pull up 30B. And who is this? What's the account that you
17 were preparing this summary for?

18 A. I apologize if I say it incorrectly, but this is for Eric
19 Nji.

20 Q. N-j-i?

21 A. N-j-i, yes.

22 Q. And then if we could go to the totals area there, just
23 reference that. Can you just tell the jury what the totals
24 were just for these specific transactions you extracted?

25 A. Yes. Just for these specific transactions, Mr. Nji

1 received \$1,380 -- received \$1,380 and sent \$3,000 in a total
2 of 25 transactions.

3 Q. And then just one more. We'll publish 31B. And which
4 account was this identified as belonging to?

5 A. Wilson Fonguh.

6 Q. And if we could just go to the bottom area there. And if
7 you could just give us the totals for that.

8 A. Mr. Fonguh received \$3,110 and he sent \$6,730 total of 31
9 extracted transactions.

10 Q. Thank you. Nothing further.

11 **THE COURT:** Thank you.

12 **MR. IVEY:** No questions, Your Honor.

13 **MR. BASILE:** No questions, Your Honor.

14 **THE COURT:** Mr. Wilson.

15 **C R O S S E X A M I N A T I O N**

16 **BY MR. WILSON:**

17 Q. Good afternoon, sir.

18 A. Good afternoon.

19 Q. You mentioned those summaries that were on the screen
20 just a moment ago. Those were taken from a much larger
21 collection of transactions, correct?

22 A. That's correct.

23 Q. Okay. And the summary that was produced, you produced
24 that summary, correct?

25 A. That's correct. It was a collaboration, but that's

1 correct.

2 Q. And with whom did you collaborate to create that summary?

3 A. The two agents that I was working with.

4 Q. Nothing further, Your Honor.

5 **THE COURT:** Thank you. Anything else?

6 **MR. MIHOK:** Nothing further, Your Honor.

7 **THE COURT:** Thank you very much, you're excused.

8 **MR. MIHOK:** Your Honor, I know it's a little bit
9 early. We have another witness, Agent Marks. She's got some
10 summary exhibits. There's one we have to get. There's a
11 slight edit to it, so if we could take the --

12 **THE COURT:** Take the break now?

13 **MR. MIHOK:** Yes, that would be great.

14 **THE COURT:** Then we'll be stopping at 5.

15 **MR. MIHOK:** Yes, Your Honor, yes.

16 **THE COURT:** We'll take the afternoon recess. Thank
17 you.

18 **(Recess was taken from 2:59 to 3:11 p.m.)**

19 **MR. IVEY:** Your Honor, I have a preliminary --

20 **THE COURT:** All right.

21 **MR. IVEY:** This is, I guess, related to the issue
22 with Agent Matney. And so the video that they recorded during
23 the initial interview in which they were making statements to
24 him and he responded -- and this is the Giglio issue we raised
25 before and so I'm not raising it again now, but I think the

1 Court said at the time that we could address it when Mr. St.
2 Michael testifies instead of trying to do it through the
3 agents. So I just wanted to preserve the point. And the Court
4 may have questions apparently, but if not, I guess we'd just
5 deal with it then.

6 **MS. GAVIN:** Your Honor, it's possible we don't call
7 Mr. St. Michael so I think it's important that defense know
8 that.

9 **THE COURT:** Okay. Well, as I recall the issue
10 doesn't come up with this particular witness.

11 **MS. GAVIN:** It's Mr. Mihok's witness, but this
12 witness is present, but is not going to testify about that at
13 all.

14 **MR. MIHOK:** That's correct, yes.

15 **MR. IVEY:** Yeah, the issue was at least I couldn't
16 tell because the camera only focused on Mr. St. Michael and so
17 I heard voices of the investigators, but I didn't know which
18 one was which. So that was the only part --

19 **THE COURT:** Well, regardless of whether Agent Marks
20 was present at the interview of Mr. St. Michael, my
21 understanding is that the agent will not be talking about --

22 **MR. MIHOK:** Correct.

23 **THE COURT:** --the interview of Mr. St. -- is that
24 correct?

25 **MR. MIHOK:** That's correct. This agent is not going

1 to talk about the interview with Mr. St. Michael.

2 **THE COURT:** Okay.

3 **MR. IVEY:** And so the Court had said if necessary,
4 Mr. Ivey or whoever it was, you can call her in your case,
5 that we weren't waiving it is the point that I'm trying to get
6 at by not raising it now.

7 **THE COURT:** I think this went back to an issue about
8 Mr. St. Michael and if Mr. St. Michael testified.

9 **MR. IVEY:** Yes.

10 **THE COURT:** Which he may or may not do we've just
11 been told. If he testified, then that might open the door for
12 promises that had been made to him.

13 **MR. IVEY:** Yes, Your Honor.

14 **THE COURT:** But we're not there yet. He hasn't
15 testified.

16 **MR. IVEY:** Correct.

17 **THE COURT:** Okay.

18 **MR. BENOWITZ:** And Your Honor, given the
19 Government's statement about whether or not they're going to
20 call Mr. St. Michael, I just want to make sure he's still
21 under subpoena because we may want to call him.

22 **THE COURT:** Is he --

23 **MS. GAVIN:** He's not under subpoena, but he's
24 certainly available to them.

25 **MR. BENOWITZ:** I'm sorry, that's what I meant.

1 **THE COURT:** If the defense wishes to call him --

2 **MS. GAVIN:** He's represented by Bob Bonsib and I
3 know they don't want to get in touch with him, but we'd be
4 happy to reach out to Mr. Bonsib if for some reason they need
5 assistance in that.

6 **THE COURT:** Thank you.

7 **MR. BENOWITZ:** And given the time frame I guess we'd
8 need to know because again, obviously I don't know the extent
9 of or what the Government's schedule is for Monday, but --

10 **THE COURT:** Yes, what is the -- and I don't know how
11 long this agent will take and this cross-examination, but is
12 there anything else?

13 **MS. GAVIN:** If Ms. Marks finishes today we may rest
14 today. That's where we're leaning.

15 **THE COURT:** Okay.

16 **MR. IVEY:** If that's the case I would ask to make
17 the MJOA arguments on Monday because I wasn't expecting this.
18 And I did just have a quick question on this: Is this just
19 going to be the sort of introducing the documents just like
20 Mr. Clemson did or is there more detail?

21 **MR. MIHOK:** Just a little bit more detail because
22 there are all these questions about firearms and transfer
23 records, so she's going to introduce just one of the firearm
24 transfer records and highlight a few items on this. We're not
25 going to go through every single firearm. These are all the

1 firearms seized from the container.

2 **MR. IVEY:** So we could be done in 20 minutes or so?

3 **MR. MIHOK:** Well, I think it's a little bit longer
4 than that, but I do anticipate finishing today and passing her
5 for cross-examination, for sure.

6 **THE COURT:** Okay. If it would be helpful -- I mean,
7 do you all want to have Mr. St. Michael on call for Monday? I
8 mean, should we be -- given that it's 3:15 now, sending an
9 e-mail or something? Is that possible?

10 **MR. IVEY:** I think we should.

11 **THE COURT:** To just alert I guess through Mr. Bonsib
12 that you might want to call him?

13 **MS. GAVIN:** Yes, Your Honor. I'm happy to send that
14 message.

15 **THE COURT:** Great. Mr. Mihok can ask questions. Is
16 that acceptable for defense counsel?

17 **MR. BENOWITZ:** It is for me, Your Honor.

18 **MR. IVEY:** Yes, Your Honor.

19 **MS. GAVIN:** What time would defense counsel like him
20 here?

21 **THE COURT:** Do you have any other witnesses that you
22 would be calling first in the morning after the MJOA?

23 **MR. IVEY:** We were going to actually talk about that
24 some over the weekend because we didn't -- I thought the
25 Government's case was going to go into next week, so I didn't

1 know that we were going to be leading off on Monday morning.
2 So I apologize to the Court for not anticipating.

3 **MS. GAVIN:** Your Honor, I'm available by e-mail
4 pretty much 24/7 so how about if the defense chats and they
5 just e-mail me if they can't reach Mr. Bonsib, who I assume --

6 **MR. IVEY:** I just saw him this morning.

7 **MS. GAVIN:** I think they're in the same building, or
8 somebody is. But if there's any difficulty, I'm happy to call
9 him.

10 **MR. IVEY:** I think it would be better to come from
11 you.

12 **THE COURT:** You're not -- yes, I think if you don't
13 mind, it would just at this point be sort of a heads-up that
14 the defense may wish to call him in on Monday. You're not
15 committing, that's not -- that's their decision obviously, but
16 just that he sort of be on standby.

17 **MS. GAVIN:** My phone is over there. Would that be
18 helpful if I do that right now?

19 **THE COURT:** That would be very helpful.

20 **MS. GAVIN:** Thank you, Your Honor.

21 **THE COURT:** So I will have to see where we are at
22 the end of the day. We've asked the jury to come in at 9 on
23 Monday. If we are actually finished the Government's case --
24 I'm just thinking out loud here -- maybe bringing all of you
25 in at 9 and the jury at 10 so that you can make your motion

1 and then assuming we go ahead, go ahead.

2 **MR. BENOWITZ:** That sounds like it makes sense. If
3 the Government rests today, I think that makes sense.

4 **THE COURT:** Yeah, we'll see what happens.

5 **MR. MIHOK:** The only other thing we need to do is
6 just to conform the exhibit list. So subject to doing that
7 which Mr. Gasque has been on top of that, but just to make
8 sure we're all on the same page with that.

9 **THE COURT:** Yes, it's always subject to checking the
10 exhibits, so that's fine.

11 All right, bring in the jury.

12 **(Jury entered the courtroom at 3:20 p.m.)**

13 **THE COURT:** All right, thank you, ladies and
14 gentlemen. And everyone can be seated. Mr. Mihok.

15 **MR. MIHOK:** Yes, Your Honor. At this time we call
16 ATF Special Agent Jen Marks to the stand.

17 **THE COURT:** All right.

18 **THE CLERK:** Please raise your right hand.

19 **(Witness, sworn.)**

20 **THE CLERK:** Please be seated. Please speak directly
21 into the microphone, state and spell your full name, for the
22 record, please.

23 **THE WITNESS:** My name is Jennifer, J-e-n-n-i-f-e-r
24 Marks, M-a-r-k-s.

25 **THE CLERK:** Thank you.

D I R E C T E X A M I N A T I O N

BY MR. MIHOK:

Q. Where do you work?

A. I work for the Bureau of Alcohol, Firearms -- Alcohol, Tobacco, Firearms and Explosives.

Q. And how long have you worked there?

A. I've worked there as a special agent since 2009.

Q. And in what capacity?

A. I'm a criminal -- special agent criminal investigator charged with investigating violations of federal firearms and explosives laws.

Q. In 2019 did you become involved with the investigation that's the subject matter of the trial here?

A. Yes, I did.

Q. And what -- just broad strokes, what was your initial involvement?

A. My initial involvement is I received information on the recovery of a firearm and information about a shipment of firearms possibly going to Nigeria or Cameroon.

Q. And was this a dual-agency investigation?

A. It was. When I received that information I contacted my colleague, Special Agent Matney, to continue the investigation.

Q. And what role did ATF assume primary responsibility for in the context of this investigation?

1 A. In the context of this investigation, primarily
2 responsibility for the firearms and ammunition, coordinating
3 that aspect of the investigation, working with also our
4 forensic auditor, Dave Clemson, as well.

5 Q. And there were firearms that were seized and analyzed at
6 various times in this investigation?

7 A. That is correct.

8 Q. And when was that, rough time frame, that first firearm
9 received for analysis that you followed up on?

10 A. The very first firearm received was received in
11 approximately March of 2019 and was subsequently submitted to
12 the lab.

13 Q. Did you also coordinate with various ATF forensic
14 analysts, digital fingerprints or firearm toolmark examiner
15 requesting follow-up evaluations related to this
16 investigation?

17 A. Correct. Across the course of the investigation I had
18 multiple interactions with our national lab, the ATF forensics
19 special agent, our computer -- I'm sorry, cell phone expert,
20 as well.

21 Q. Were you present on May 20, 2019 when a container was
22 searched here at the Port of Baltimore?

23 A. I was.

24 Q. Were you also present and assisting with coordinating
25 searches of multiple locations on July 19th of 2019?

1 A. I was.

2 Q. And how many locations were searched that day?

3 A. There were two locations in Minnesota, two residences,
4 and a residence in Maryland.

5 Q. And were -- was digital evidence seized from those
6 locations on that day?

7 A. Yes, there was.

8 Q. And did you review, the case agent review the hard drive
9 that contained that working copy of those extractions?

10 A. I reviewed in some shape or form all the extractions from
11 all the residences.

12 Q. How much time did you spend doing that?

13 A. I would probably say over the course of the
14 investigation, probably a couple weeks over the totality.

15 Q. And did you ensure that those copies of that forensic
16 analysis, those downloads were also provided and provided to
17 -- copied and provided to defense?

18 A. Yes.

19 Q. Did you also review notebooks that were seized during the
20 execution of search warrants?

21 A. I did.

22 Q. And Cash App application, entries from Square/Block, Inc.
23 that were provided pursuant to a grand jury subpoena?

24 A. I did.

25 Q. And reviewed records related to the purchase of firearms?

1 A. Yes, I did.

2 Q. And what are those forms -- what are the records related
3 to the purchase of firearms, what are they called?

4 A. They're called a Firearms Transaction Record. It's an
5 ATF form 4473 is the actual form number.

6 Q. And did you run firearms traces related to this
7 investigation?

8 A. I did.

9 Q. And we'll pause there for a moment. And with regard to
10 -- and we'll come back to those traces and other firearm
11 records. So did you review those records above that I've just
12 mentioned, all those various sources and prepare an exhibit
13 that's in sort of a timeline fashion summary exhibit that
14 references those as a summary exhibit?

15 A. Yes, I did.

16 Q. And so I'd like to pull up Exhibit 73, please. So just
17 looking at Exhibit 73 here, just walk the jury through the
18 columns left to right.

19 A. Sure. So if you look at the column, the first column is
20 the date. It's pretty self-explanatory. "Source" is where the
21 information is from. The "exhibit" relates to the exhibits
22 that you've seen during the course of the trial. "D" is for
23 the defendant that it may be directly applicable to and then
24 "notes" are just some short notes about if it's from a chat,
25 it's information from the chat. If it's a document, it's the

1 title of the document or if it's a photo.

2 Q. And why don't we go to the bottom portion of this.

3 Picking up at around 12:10 through the end of the page there
4 and just this exhibit -- so can you just walk the jury through
5 what you were trying to do here and what this shows?

6 A. Um, what it is showing is kind of the buildup to the
7 loading of the container which you've heard testimony about.
8 So obviously financial dealings are part of this
9 investigation, so there's money will be sent. Mr. Nji
10 coordinated sending funds of \$500. And then on 12/14/2018 Mr.
11 St. Michael purchased an SKS rifle. There is a Cash App
12 transaction where Mr. Mancho sent \$3,000 for sticks. There's
13 no defendant there because it went to another individual.

14 The 12/15, Mr. Nji in this chat asked if there's any
15 update on the container. Mr. Fonguh then discussed
16 concealment. There's also some discussion about the shipping
17 container being at the lab on 12/17. And one of the
18 discussions is 12/28 -- I'm sorry, 12/22/2018 is discussions
19 about needing to distract inspectors with soft drinks and then
20 concerns with it being in the driveway. And then 12/23 is an
21 actual photo of the container which was identified being out
22 on St. Michael's residence.

23 Q. And to the right there in the note section, for example,
24 when you wrote "shipping container at lab" and then it's SR.
25 What's 001.0060? What does that signify?

1 A. That's referring to the Bates stamp at the bottom of --
2 if we're looking at all the evidence in the WhatsApp chats, if
3 you're looking at the bottom right corner that's an actual
4 page number, because everything is given an extra number. It's
5 in addition to the page number of the whole chat.

6 Q. So therefore, the 35K, the next entry at page 62 of that
7 same 35K exhibit as far as the Bates stamp number?

8 A. Right. Because some of the exhibits like in the Exhibit
9 35K, but if it's 10 pages it's to help identify which page
10 it's on.

11 Q. And take another example from this. If we go to the
12 second page -- and so just looking at this particular block
13 here, what were you analyzing and putting together?

14 A. There's been testimony of additional shipments. So what
15 this is doing -- so for example, on 7/7/2019 there's a Cash
16 App transaction in which Mr. Tita sends Anye Collins Niba \$100
17 for stick support, "stick" being a word that was used for
18 rifle or firearms.

19 7/9/2019 a Cash App transaction. Mr. Tita sends \$400
20 to Mr. Akem for shipping equipment.

21 7/12/2019 is a WhatsApp chat which was previously
22 displayed in which Mr. Tita provides information on a sniper
23 rifle purpose. And there's comments by the other defendants
24 on that chat.

25 7/14/2019, another WhatsApp chat. They're

1 discussing need for money for the shipment and all three
2 defendants comment.

3 7/15, another WhatsApp chat. Mr. Fonguh is making
4 comments that everyone is encouraged to contribute towards the
5 shipment. And Mr. Nji says "thanks for the reminder." There's
6 the Bates stamp to give you that exact page number.

7 7/16, Cash App as well. Mr. Tita sent \$200 for Mr.
8 Mancho for the shipping consignment to G1.

9 And then on 7/18/19 a WhatsApp chat in which Mancho
10 says," he sent the shipment yesterday after the night shift"
11 and 7/19 is when we executed the search warrants at the three
12 residences.

13 Q. All right, if we could just toggle back to page 1. And so
14 just one last section of this that we'll be publishing and
15 discussing, Exhibit 73. Now so working through this 10/6
16 through 10/8, what are we looking at here?

17 A. So it's a similar total timeline trying to put all the
18 different events together. So on 10/6/2018 there's a Cash App
19 transaction in which Mr. Tita sent \$100 to Mr. Anye Collins
20 Niba for ground nuts.

21 10/6/2018 is actually the creation of that Peanut
22 chat which you've seen a number of exhibits from.

23 Then on 10/6/2018 again another Cash App
24 transaction, same thing. Mr. Tita sent another one, ground
25 nuts.

1 10/7 -- I'm sorry, 10/6/2018 there's actually a
2 photograph. It's Exhibit 20L which is a luggage tag that you
3 saw from the first search of the container on May 20th. So
4 that luggage tag is the date of Mr. Akem's flight from
5 Minneapolis to Washington Reagan.

6 Then you have the 10/7/2018 which are the photos
7 that were taken in the basement of Mr. Fonguh and Mr. Nji and
8 Mr. Tita sitting on packaging.

9 Q. That's also -- what's that basement been called?

10 A. The basement is the lab and it's in St. Michael's -- Mr.
11 St. Michael's residence on Golden Ring Road. That date should
12 actually be 8/1/2019. It's a photo of Exhibit 21L which is a
13 photo of evidence that was seized during the search of the
14 second search of the container on 8/1/2019 and it's a picture
15 of that orange -- of packaging square boxes wrapped in orange
16 cling wrap with duct tape.

17 **MR. IVEY:** Your Honor, may we have a sidebar,
18 briefly?

19 **THE COURT:** Yes.

20 **(Private conference ensued.)**

21 **THE COURT:** Mr. Ivey?

22 **MR. IVEY:** Your Honor, I thought that this was going
23 to be just a general overall introduction as to what the
24 spreadsheets are. I didn't know she was going to read all of
25 it into the record. At this point I would think that, you

1 know, I hadn't objected to presenting some of this and I do
2 have some cross-examination questions, but again, reading the
3 whole thing into the record --

4 **THE COURT:** She's not going to read the whole thing.
5 There's like three more lines here, right?

6 **MR. MIHOK:** That's it.

7 **THE COURT:** That's it.

8 **MR. IVEY:** Okay.

9 **THE COURT:** Thank you.

10 **(Private conference ended.)**

11 **BY MR. MIHOK:**

12 Q. Agent Marks, with regard to that photograph regardless of
13 when it was taken, but why did you include a reference to that
14 photograph in the area where you had the two photos at 32M and
15 32K?

16 A. I included that because it appears that the packaging in
17 which the defendants -- one of the defendants was sitting in
18 the photo that was taken on October 7, 2018 is very similar to
19 the packaging that was recovered from the container on August
20 1, 2019 --

21 Q. To be clear, you're not showing that for the proposition
22 that it's the same exact one?

23 A. No, no, it's just similar in nature.

24 Q. And then I think the next one was 10/8 there's a WhatsApp
25 you referenced Exhibit 35B?

1 A. Correct.

2 Q. And what's that?

3 A. The WhatsApp is the reference of the posting of the
4 minutes, the assessment minutes which you've heard about.
5 There's a comment about the minutes. And then the following
6 exhibit is the actual minutes, so Exhibit 34B.

7 And then 10/8 is a follow on transaction that Mr.
8 Nji sent to Mr. Akem for rent which was previously testified
9 to.

10 Q. And how much was that?

11 A. It's for \$500.

12 Q. Okay. So that exhibit, it's in evidence and I think we'll
13 move on from there now.

14 And you also requested latent fingerprint analysis
15 and coordinated those efforts with the national laboratory?

16 A. I did.

17 Q. And just to be clear, when Mr. Thomas was testifying, he
18 indicated that the results came back to a Tamufor and
19 Nchumuluh. Who is that?

20 A. That is Mr. St. Michael.

21 Q. And on June 21, 2021, there was further request for
22 on-site assistance from the latent print section. Could you
23 just tell the jury a little bit about how that came to be and
24 what happened that day?

25 A. Sure. As the investigation proceeded and one of the

1 things that had come up due to the nature and the amount of
2 evidence that was obtained of the firearms and ammunition, had
3 to coordinate with the laboratory to figure out the best way
4 to process it because they're the experts. So in terms of
5 determining what they can do, what they can't do based on the
6 volume, based on us taking all the evidence and then also due
7 to COVID it took -- it's an unusual request to have them
8 actually come out to a location to pick out items. So between
9 COVID which limited our capability -- limited availability
10 because everything was shut down --

11 **MR. IVEY:** Objection, Your Honor.

12 **BY MR. MIHOK:**

13 Q. Okay, just tell us what happened that day.

14 A. Yeah, so that day then Mr. Thomas responded to an
15 alternate evidence location which we needed because the
16 evidence that had been recovered could not fit in our field
17 office evidence vault. So he is the expert, so I coordinated
18 with him to pick out items that he thought had the best
19 ability for him to get some usable information off of.

20 Q. So who selected the ten items that were tested then?

21 A. Mr. Thomas.

22 Q. And you -- Mr. Thomas testified about a sixth submission
23 that was received just a couple weeks ago. Can you tell the
24 jury a little bit more about that?

25 A. Sure. As we were preparing for trial and reviewing,

1 continuing to review the evidence, as I said there was a fair
2 bit in reviewing the evidence in preparation for trial. We
3 identified the PMAGS that had the ITAR violations on them or
4 the ITAR warning on the PMAGS and found the location where
5 those were recovered from which was a rifle box with some
6 additional packaging. We were able to eventually identify that
7 we still actually had that packaging and that's when it was
8 submitted to the lab.

9 Q. And just to be clear, that packaging and that submission,
10 where were those items recovered from?

11 A. I'm sorry?

12 Q. The items that were submitted just a couple weeks ago.

13 A. Oh, okay. It was recovered from inside a rifle box in
14 which the two -- the firearms that you saw that had the
15 scopes, they were recovered during the first search of the
16 container. There were two privately manufactured ARs and
17 each -- they were packaged similar, so it was two ARs with
18 four PMAGS in each of these rifle boxes. And you saw that
19 they were wrapped in foil and Saran, you know, cling wrap and
20 that's what was submitted was that packaging, the internal
21 packaging, the ones the two rifles were recovered from.

22 Q. And which search of the container was that?

23 A. That was the May 20, 2019.

24 Q. So I want to turn back to those firearm transfer records
25 you were mentioning before. They're also referred to as 4473

1 forms. If we could pull up Exhibit 68, please. And so Exhibit
2 68, what are we looking at here?

3 A. Hold on. It's a firearms transaction record, as I said,
4 also known as ATF form 4473.

5 Q. And is this one of the ones that you were able to acquire
6 related to this investigation?

7 A. Yes, it was.

8 Q. Approximately how many 4473 or firearm transfer records
9 did you get -- were you able to collect related to this
10 investigation?

11 A. I would have to look to get a total, to check notes.

12 Q. Did you end up recording that on a summary exhibit?

13 A. I did.

14 Q. Okay.

15 A. That is correct.

16 Q. Just wait for me to finish the question and maybe slow
17 down just a little bit okay, Agent Marks. So if we could just
18 take the first part or first half of this and just tell us
19 what we're looking at there.

20 A. This is the first part of the form which is filled out by
21 the individual who is wishing to purchase the firearm. So he
22 needs -- he or she needs to -- it's fairly self-explanatory in
23 terms of the information that is required. The key is that you
24 have to put down an actual -- a physical residence.

25 Q. And who fills out this form?

1 A. The purchaser.

2 Q. And where is this form -- you know, well when is this
3 form filled out?

4 A. It is filled out when an individual wishes to purchase a
5 firearm from a federal firearm's licensee.

6 Q. And where is this form maintained? Where do you get this
7 form?

8 A. This form is maintained -- federal firearms licensee, gun
9 shop, it's a business and they're required to maintain this as
10 one of their business records.

11 Q. And when you reviewed the FTRs or 4473s you were able to
12 obtain related to this case, did they obtain -- were they all
13 in the name of Tamufor St. Michael?

14 A. Yes, they were.

15 Q. And other than the firearm information and the date of
16 the transaction being different, were they substantially
17 similar in sum and substance?

18 A. Yes.

19 Q. And the form itself is the same, is that fair?

20 A. Yes.

21 Q. But what about -- what was different about the
22 information that was filled out on the form itself?

23 A. The firearm information as to what exactly was purchased.

24 Q. And then if we could highlight the questions here on the
25 last half. So you see the questions after that background or

1 biographical information, questions that pick up at No. 11?

2 A. Yes.

3 Q. And who fills out this part of that form?

4 A. The purchaser.

5 Q. And did you compare the answers that were provided here
6 across the various 4473 transaction records you were able to
7 get in this investigation?

8 A. Yes, I did.

9 Q. And were these yes/no answers substantially similar?

10 A. Yes, they were.

11 Q. And what is -- let's just take the first one there, 11A,
12 the only "yes" answer. What is that one?

13 A. 11A reads, "Are you the actual transferee buyer of the
14 firearm listed on this form? Warning, you are not the actual
15 transferee buyer if you're acquiring the firearm or firearms
16 on behalf of another person. If you are not the actual
17 transferee buyer the licensee cannot transfer the firearms to
18 you."

19 Q. And that's fine. And what box did Mr. St. Michael check
20 there?

21 A. He checked "yes."

22 Q. Based on what you know in this investigation or
23 information you developed, is that accurate?

24 A. No.

25 Q. And let's go to page 2. And just if we could just

1 highlight the top part of that form. And there's a
2 certification there and whose signature is that?

3 A. It's going to be the purchaser's signature.

4 Q. St. Michael?

5 A. Correct.

6 Q. And what's the date of this specific transaction?

7 A. November 12, 2018.

8 Q. And if we could just -- looking at this form, is there a
9 portion of this form that the firearm -- federal firearm
10 licensee, the FFL fills out?

11 A. Yes, there is.

12 Q. And which portions are those?

13 A. One thing that they're doing is the next section below
14 they're going to have to review identification provided by the
15 purchaser. So that's where the identification is written.
16 And then also they have to submit the information to NICS
17 which is where it's a background check and so they fill out
18 that information as well.

19 Q. With regard to these forms, how do you eventually obtain
20 them? If they're at the individual federal firearm licensee,
21 how do you obtain a copy? How did you get this copy?

22 A. I actually have to go to the federal firearms licensee,
23 the gun shop owner to obtain the records.

24 Q. And is the serial number associated with the firearm
25 that's part of this transaction, is that also recorded and a

1 part of this record?

2 A. Yes, it is.

3 Q. And so how does the tracing that you're able to do relate
4 to these 4473 forms?

5 A. So firearms tracing, there's no national federal firearms
6 registration. So the tracing is -- what will happen is when
7 we recover a firearm, we have to submit information about the
8 firearm to our national tracing center. And that information
9 is going to be make, model, serial number, caliber and in some
10 cases an importer, if necessary, if the firearm was
11 manufactured overseas and, you know, outside the U.S.

12 So what will happen is when we recover that firearm,
13 we provide the information to the national tracing center.
14 We'll contact the manufacturer and then the manufacturer will
15 tell them assuming all the information is usable to be traced,
16 they'll contact the distributor. And it will work its way
17 ultimately down to the federal firearms licensee who has the
18 actual record of the purchase of that firearm.

19 Q. And some of the other forensic analysis you requested in
20 this case, did it also include serial number restoration?

21 A. That is correct.

22 Q. When did you receive those results or partial results of
23 serial numbers associated with those firearms?

24 A. In February of this year.

25 Q. What did you do with that information?

1 A. I then took the information and submitted it to the
2 tracing system to see if I could identify the purchasers of
3 the firearms.

4 Q. And what did you do with the numbers that had only been
5 partially restored, were you able to take any action with
6 those?

7 A. We are able to submit firearms with partially restored
8 serial numbers. It takes a lot longer for them because
9 obviously for each unidentified, I guess, number or letter,
10 there's a number of variety of possibilities. But they are
11 able to take that and sometimes they are able to identify a
12 firearm, a specific firearm that was purchased.

13 Q. And with regard to ATF forms or forms in a database that
14 ATF has access to, are there forms like this associated with
15 the purchase of ammunition?

16 A. No.

17 Q. How about scopes, like the scopes that we saw in the
18 photographs, Exhibit 17 and 19, the Bushnell and the Burris?

19 A. No.

20 Q. How about magazines, are there -- is there a database or
21 a place to check for magazines that hold ammunition?

22 A. No.

23 Q. How about personally or privately manufactured firearms,
24 is there a place or a way to check those firearms to see if
25 the parts that make up those firearms came from a specific

1 location or manufacturer?

2 A. For rifles? No. Sometimes for others, a slide might
3 have a number, but it's -- in general, no.

4 Q. And what about personally or privately manufactured
5 firearms, is there a license required to do that?

6 A. No, not to manufacture for personal use.

7 Q. And how about ammunition, the process that we saw where
8 we saw in the lab there where they were pressing that
9 ammunition, is there a permit or some sort of licensure
10 required for that?

11 A. There's no license required for personal use, but there
12 is for sale or distribution.

13 Q. Other than the ATF database that you already mentioned,
14 do you also have access or are you able to run checks for
15 databases maintained by the state of Maryland?

16 A. Yes.

17 Q. And were you able to run a check to determine if someone
18 has gun collector status?

19 A. Yes.

20 Q. And did you run that check?

21 A. Yes, I did.

22 Q. And what did you learn?

23 A. I was able to determine that Mr. St. Michael applied for
24 and was given a designated collector status under the state of
25 Maryland.

1 Q. And what is designated collector status? What does that
2 allow someone to do?

3 A. It allows someone to purchase more than one firearm in a
4 30-day period. It does not change the waiting period, but --
5 and as I'm not a state agent, however I caused it to be
6 queried and so it allows for -- as I said, it waives that
7 30-day, one per 30-day requirement.

8 Q. And were you -- approximately when did Mr. St. Michael
9 get that designated collector status?

10 A. In May of 2017.

11 Q. And what is it, is it like an identification card that
12 they would bring into an FFL, a federal firearm licensee when
13 they're requiring a firearm?

14 A. No. You get a letter, but you're not required to show it
15 because when it's approved it's in the Maryland state
16 database.

17 Q. And did you create an exhibit then that pulled all the
18 information you were able to acquire about the firearms from
19 the container into one exhibit?

20 A. Yes.

21 Q. And so if we could publish Exhibit 69, please. And so if
22 we could just take the first couple. We're not going to go
23 through every firearm, but just working left to right, if you
24 could just explain to the jury maybe drop down and take a few
25 firearms with it. There you go, that's great. Thank you,

1 Damon.

2 And so just working left to right, just explain to
3 the jury, pick out one as an example of what we're looking at
4 here. So it's starting left, ATF PN, what is that.

5 A. That is the ATF property number that we use to track
6 items in our evidence system. And then exhibit number -- the
7 exhibit numbers were introduced to the Court. Attachment 1 is
8 for items that were seized from the container. Count Four is
9 items with obliterated --

10 Q. I'm sorry, slow down a second, I'm sorry. So Attachment
11 1, what is Attachment 1, that column, the third column from
12 the left?

13 A. Those are firearms that were determined to be exported
14 and that's HSI Matney's expertise to be exported without a
15 license.

16 Q. What's the attachment of?

17 A. Oh, it's the attachment with the list of items that are
18 charged in this.

19 Q. So it's the Attachment 1 to the superseding indictment?

20 A. Yes.

21 Q. And the Attachment 1, those firearms, they're not
22 numbered in Attachment 1?

23 A. Correct.

24 Q. So how did you -- this numbering convention, what is
25 that?

1 A. That was something I just used to marry up the firearms
2 that were listed in this Attachment 1 of the superseding
3 indictment, to marry them up with the ATF property number
4 which were the items seized by Agent Matney and turned over to
5 me.

6 Q. So you just designated the first one on Attachment 1 to
7 the first superseding indictment as number 1 and continued
8 through Attachment 1?

9 A. Correct. There will be some out of order because of
10 where they were listed on Attachment 1 didn't marry up with my
11 ATF property number. I used that as an anchor for this whole
12 chart.

13 Q. Right. So why did you choose the ATF property number on
14 the far left column as the number or the convention for it for
15 this exhibit?

16 A. Because one, that's one thing I'm most familiar with and
17 it runs sequentially.

18 Q. Okay. So then Count Four, what's that a reference to?

19 A. Count Four is for the obliterated serial number, the list
20 of obliterated serial numbers.

21 Q. And again, are the firearms in that specific count
22 numbered 1, 2, 3 like that or did you start at the first one
23 and just continue through?

24 A. No, they don't run completely sequentially because as I
25 said, using the ATF property number as the anchor, how they

1 were listed in Count Four didn't always marry up with ATF
2 property number.

3 Q. So that references Count Four in the indictment. Then the
4 next column is the seize date. What are the dates that are
5 indicated there?

6 A. The first date, 5/20/2019 is the first search of the
7 container and then the second date, 8/1/2019 is our second
8 search.

9 Q. And then just keep going. So type, manufacturer?

10 A. So type, obviously if it's a rifle or a handgun. The
11 manufacturer, the manufacturer of the firearm. The importer is
12 determined if it was manufactured outside the U.S. there will
13 be -- should be importer information. The model is the type of
14 firearm. The caliber is the size of the ammunition that the
15 firearm is designed to fire. Serial number as you heard from
16 Mr. Esposito is the marking requirements for that firearm.
17 Recovered serial number is whether one was recovered from the
18 ones which were obliterated. The date purchased, if I was able
19 to submit a successful trace or if I recovered a 4473 I was
20 able to fill out that column. The date purchased, the
21 purchaser is the individual who purchased that firearm whether
22 it was identified through a 4473 or the results of a trace.
23 The FFL is the gun shop in which that firearm was purchased
24 and 4473, yes or no, is yes if I obtained the 4473.

25 Q. And for instance, here in the highlighted portion, three

1 up from the bottom there, there's a purchase date of 2/12/12.

2 Did you seek out a 4473 related to that transaction?

3 A. I did not.

4 Q. And what was the reason for not doing that?

5 A. I got those results since I didn't get -- that's a
6 restored serial number which I received in February of this
7 year. I submitted it. The process does take a bit and then
8 when I received this and given that it's a date about
9 approximately seven years before this occurred, I did not
10 obtain one.

11 Q. And the purchaser information there, there's no
12 information, you've not developed any information that those
13 individuals other than St. Michael had anything to do with
14 acquiring the firearms for the purpose of shipping them out of
15 the country, anything along those lines?

16 A. That is correct.

17 Q. And then the last column, the 4473, you just have a "Y"
18 there for where you were able to actually physically get a
19 4473 form. That's the firearm transaction record we just
20 reviewed?

21 A. Yes, that is correct.

22 Q. And to be clear, which firearms are covered in this
23 exhibit, Exhibit 69?

24 A. These are all the firearms that were recovered from the
25 two searches of the container.

1 Q. And the first four items here, ATF PN 29, 30, 32 and 33,
2 that indicates "manufacturer unknown." What's that?

3 A. Those are considered privately manufactured firearms
4 because they don't have the markings that are required under
5 federal law on firearms. So there's no identifiable markings,
6 as I said, to be able to determine a manufacturer or model.

7 Q. And for those firearms in addition to having no serial
8 number, you designated the caliber "ZZ." What is that?

9 A. It means it was unknown at the time of seizure.

10 Q. So looking at these firearms contained in this record,
11 did any of them require a special permit or approval or
12 authorization to acquire?

13 A. Not under federal law.

14 Q. And you're familiar with the ammunition that was
15 collected from the container associated with this
16 investigation?

17 A. Yes, I am.

18 Q. And what was the total just overview there of the
19 ammunition that was recovered from that container?

20 A. So there were approximately 20,000 rounds, so ready to be
21 utilized in a firearm, 7.62 by 39 caliber ammunition. There's
22 approximately 7,000 rounds of 308 caliber. There's
23 approximately 12 to 1,300 rounds of 1338 Lupara. About 200
24 rounds of 556. Then there was a number of about now 5,000
25 ammunition components which are casings, primers, you know,

1 bullets that account for the 5,000 of 223.

2 Q. And that ammunition, was it compatible with the firearms,
3 any of the firearms that were listed here?

4 A. It was compatible with all of them.

5 Q. And looking at this chart, can you tell the jury if there
6 was any -- what, if any, of these firearms were considered to
7 be sniper-style rifles?

8 A. Several of the firearms which we consider sniper-style
9 because it allows you to engage a target at a long distance
10 while remaining concealed so that the target so-to-speak
11 cannot identify your location. So if you look --

12 Q. If you could just touch the screen or make an X or
13 something, that would be great.

14 A. Let's see.

15 Q. Is it working? Are you touching the screen?

16 A. I'm touching the screen.

17 **THE CLERK:** Try it now, Agent Marks. Try it now.

18 **THE WITNESS:** Try again?

19 **THE CLERK:** Yes.

20 **THE WITNESS:** There we go.

21 **BY MR. MIHOK:**

22 Q. Start over. Okay, go ahead. Sniper rifles.

23 A. So this one that's underneath the green line.

24 Q. Is that 125?

25 A. That is correct.

1 Q. Just 125?

2 A. Just 125.

3 Q. Okay. And what can you tell the jury about that rifle?

4 A. As I said, it's a 300 caliber which is a larger caliber
5 round as I said for obtaining -- it gives you the ability to
6 target things at a longer distance.

7 Q. Okay. And you mentioned there were others. Just is there
8 another sniper rifle there?

9 A. Yes, there's several. Would you like me to --

10 Q. Yes.

11 A. Actually, we can do number -- sorry, 37.

12 Q. 37?

13 A. Yeah.

14 Q. Okay, any others?

15 A. Yes, as you scroll down to 149, 150 and 151.

16 Q. And when we look at 140 -- I'm sorry, 149, Exhibit 60,
17 60A, it indicates that the serial number was obliterated,
18 recovered serial number not submitted. Can you tell the jury
19 what happened?

20 A. So during the original processing of the firearm, I found
21 what I thought was a serial number underneath a portion of the
22 hand guard so I ended up not submitting it. But when I went to
23 submit the trace, the tracing center said that serial number
24 was not valid, but it had already been not submitted.

25 Q. And were there any other sniper-style rifles?

1 A. Yes, number 148.

2 Q. Can you tell the jury a little bit about that particular
3 firearm?

4 A. So it's a bolt action .50 caliber rifle. So it can
5 obtain -- effectively shoot at approximately 2,000 yards,
6 obviously a variety of factors would affect that, but it's --
7 the ability is to engage not close to wherever your position
8 is.

9 Q. And what ammunition does that item take?

10 A. That takes a .50 caliber ammunition or .50 BMG as you've
11 heard.

12 Q. And so Exhibit 9 that had been previously published, that
13 round of ammunition, that was a .50 caliber round?

14 A. That's correct.

15 Q. And just to be clear, where was that round of ammunition
16 that was introduced? Where was it recovered from?

17 A. That was recovered from St. Michael's residence in July.

18 Q. Pull up Exhibit 9A, briefly. What do you recognize that
19 to be?

20 A. That would be a round of .50 caliber ammunition.

21 Q. And do you recall the packaging that that .50 caliber
22 weapon was recovered from?

23 A. I do not.

24 Q. And then if we could go back to the list. And are you
25 familiar with the term "assault rifle"?

1 A. I am.

2 Q. And what is an assault rifle? What does that term mean?

3 A. Assault rifle is not a precision rifle. So your sniper
4 rifles are precision rifles, very specific targeting whereas
5 assault rifles are to lay down a high volume fire of a wider
6 area.

7 Q. And what, if any, of these firearms -- which of these if
8 there are any, were considered to be assault-style rifles?

9 A. The SKS rifles.

10 Q. So under the model column?

11 A. Correct. Under model you'll see SKS and caliber 7.62.

12 Q. And as a generic term, what do people refer to
13 assault-style rifles as?

14 **MR. IVEY:** Objection, Your Honor.

15 **THE COURT:** Sustained, form of the question.

16 **BY MR. MIHOK:**

17 Q. Okay. Are you familiar with an AK-47?

18 A. Yes, I am.

19 Q. And what is an AK-47?

20 A. An AK-47 is an assault-style rifle. It's a different
21 manufacturer. It's a different model so-to-speak, but it has
22 the same capabilities and substance.

23 Q. And the magazines that were recovered, what was the
24 capacity, just as a general proposition -- there were a number
25 of magazines recovered, but the capacity for the magazines

1 recovered from the container?

2 A. They range from approximately a magazine that will hold
3 five rounds for some of the larger caliber, to drum magazines
4 which will hold around 100.

5 Q. And any special authorization or permission required to
6 acquire magazines that have those higher capacities?

7 A. No, there's not.

8 **MR. MIHOK:** Nothing further. Thank you.

9 **THE COURT:** All right, thank you. Mr. Ivey?

10 **C R O S S - E X A M I N A T I O N**

11 **BY MR. IVEY:**

12 Q. Let me see if I followed this. Okay. So of the weapons
13 that were purchased that you identified, they were all
14 purchased by St. Michael with a handful of exceptions. Is that
15 fair?

16 A. Can you say that again please, sir?

17 Q. So Mr. St. Michael purchased -- let me see, just my quick
18 Count, 14 of the rifles or the weapons?

19 A. I would have to look at the chart to confirm, but if
20 you're counting on the chart, that would be correct.

21 Q. Yeah, that's Exhibit 69 I'm counting. And the others
22 that have names, Ander Jack, you've determined that was not
23 the actual purchaser or what's the significance of that?

24 A. When the firearms trace came back, that's who the tracing
25 center said was the purchaser of that firearm from the FFL

1 that's listed on the document.

2 Q. All right. And then the other names? Celestine Ingra,
3 Jeffrey Leon Berger, Kent Fratsky and Adam Mickey, same thing?
4 Those are the names that came back?

5 A. Came back from the trace?

6 Q. Yes.

7 A. Yes, that is correct.

8 Q. Okay, but none of the defendants' names came back from
9 any of these traces; is that fair?

10 A. That it is correct.

11 Q. Okay. And then with respect to the weapons that were
12 printed -- actually, let me ask you this: You mentioned
13 earlier that there was a sixth attempt to get fingerprints?

14 A. Yes, sir.

15 Q. And what was the date for that?

16 A. I'm sorry?

17 Q. What was the date that you submitted it for the --

18 A. I personally did not submit it. Another colleague of
19 mine did, but I'd have to check for the exact date on the
20 report. It was recent.

21 Q. Okay, like within a month or so?

22 A. That sounds about right.

23 Q. And these are items that had been in the possession of
24 the Government since the search warrant?

25 A. That is -- since the first search of the -- in May of

1 2019.

2 Q. Okay. So for the last three years -- well, just under
3 three years the Government has been in possession of these
4 items, correct?

5 A. The sixth submission, that is correct.

6 Q. All right. And you waited 34 months before submitting it
7 for fingerprints?

8 A. I wouldn't classify it as waiting, but it was submitted
9 in that time frame that you mentioned after the original
10 seizure.

11 Q. So waited -- but unfair, but it's been 34 months roughly,
12 is that fair?

13 A. Yes.

14 Q. And this was the sixth attempt to raise fingerprints from
15 items that had been seized in roughly July of 2019 or earlier?

16 A. It's the sixth submission.

17 Q. All right. Well, when you submit them you're submitting
18 them so they can try and Mr. -- I think it was Mr. Thomas,
19 these are submitted to him so he can try and check for
20 fingerprints, correct?

21 A. Yeah, they're submitted to our ATF laboratory and then
22 ultimately end up with him.

23 Q. And the first five yielded no prints that were connected
24 to any of the defendants in this case; is that correct?

25 A. Not to my knowledge, correct.

1 Q. Let me ask you this: The table 69, Exhibit 69, is there a
2 column there for fingerprints?

3 A. There is not.

4 Q. All right. And then with respect to Exhibit 73, you have
5 a notes column, correct?

6 A. Yes, I do.

7 Q. And some of these are -- well, what's the source of the
8 notes, the language that's under the column that says "notes,"
9 is that -- well, you prepared this chart, right?

10 A. Yes, I did.

11 Q. Okay. Would it be fair to say that for some of these
12 designations the language that's written under the notes
13 column, this is your characterization of what that item is?

14 A. Some of it is shorthand and some of it is as written.

15 Q. Okay. So some of it came directly from a document where
16 it said, I don't know, "rent," for example, right?

17 A. Correct.

18 Q. But others are ones that you determined what the summary
19 would be and this reflects your language, isn't that fair to
20 say?

21 A. It's my -- yes, it's not a verbatim from an entire chat.
22 So for example, Mr. Nji is at the lab three times a week, yes.
23 That's shortened from that specific chat or that discussion.

24 Q. Okay, okay. The firearm transaction records, the 4473s,
25 now I believe it was column 11A on I think it was the same

1 column on each of the 47 -- 4473s that Mr. St. Michael filled
2 out that was filled out incorrectly, right?

3 A. Can you -- I don't have the numbers memorized on the
4 4473s. You're talking about the first box?

5 Q. Yes, ma'am. So the first one that says basically you're
6 buying this for yourself, you're not going to transfer it.

7 A. Correct.

8 Q. That was the incorrect information?

9 A. To my knowledge, yes.

10 Q. And for each of those forms, they were filled out by Mr.
11 St. Michael, correct?

12 A. That is correct.

13 Q. So again, none of these are filled out by any of the
14 defendants in this case?

15 A. That's correct.

16 **MR. IVEY:** Court's indulgence for a moment.

17 **BY MR. IVEY:**

18 Q. Oh, let me ask you this: So to the extent you talked a
19 little bit about what's legal and what's not in Maryland, when
20 you get one of the -- and correct my language if it's
21 incorrect. So they would get the empty cartridges I guess they
22 are and they would put gunpowder in and pack it in and put the
23 actual, I guess, bullet on top, is that --

24 A. That's approximate.

25 Q. Tell me the right way to say it. What is that? What are

1 they doing? What's that called?

2 A. I mean, it's reloading ammunition. I am not a reloading
3 specialist. I've never reloaded, but they're -- it's
4 manufacturing ammunition to be used in whatever capacity.

5 Q. All right. Is that permissible in Maryland?

6 A. Permissible?

7 Q. Like legal?

8 A. It's permissible for an individual to manufacture
9 ammunition for personal use.

10 Q. All right. And the machines that were bought for this
11 purpose, those were purchased legally, correct?

12 A. That's correct.

13 Q. To the best of your knowledge were they purchased by Mr.
14 St. Michael?

15 A. I don't know who purchased the machines specifically.

16 Q. Another quick question, you mentioned privately
17 manufactured firearms. Is that the technical way to say ghost
18 guns?

19 A. Historically it is -- now it is. At the time we used to
20 call them unfinished lower receivers. A ghost gun is a
21 colloquial term used by the industry. So ATF has adopted
22 "privately manufactured firearms" as the appropriate term for
23 a -- I mean, it's self-explanatory.

24 Q. Sure. And for purposes of this conversation, the point
25 there is that they don't have serial numbers, right?

1 A. Correct.

2 Q. And so you can't trace them back to where they were
3 purchased based on the serial number?

4 A. That is correct.

5 Q. Did you make an effort to try and trace the weapons based
6 on purchase information, Cash App, credit cards or those sorts
7 of things?

8 A. There's no way to -- the parts and accessories, they're
9 not serialized to tie into a specific firearm. It's very hard
10 to do.

11 Q. Okay. But I guess what I mean is if the Polymer 80
12 handgun cost \$500 you could look at somebody's credit card,
13 the visa account and see if they had purchased something from
14 Polymer80 for \$500?

15 A. Yes, that it is correct.

16 Q. Was that analysis done in this case?

17 A. There was some review of bank information, yes.

18 Q. Did all of that information come back to Mr. St. Michael,
19 to the extent you got any?

20 A. To the extent that the information that I saw and was
21 able to review, yes.

22 Q. Okay. No further questions, Your Honor.

23 **THE COURT:** All right, thank you. Anyone else? Mr.
24 Wilson?

25 **C R O S S - E X A M I N A T I O N**

1 **BY MR. WILSON:**

2 Q. Good afternoon, ma'am.

3 A. Good afternoon.

4 Q. The chart that was marked as Government Exhibit 73, you
5 created that chart, correct?

6 A. 73 is the timeline, correct.

7 Q. Yes?

8 A. Yes, I did.

9 Q. And you chose what to put in there and what not to list
10 in that chart, correct?

11 A. That is correct.

12 Q. And some of the events or things that have been discussed
13 during the course of this week you did not include in here,
14 correct?

15 A. I'm sorry, say it again?

16 Q. Some of the things that have come up during the course of
17 this trial are not reflected in this chart, correct?

18 A. That is correct.

19 Q. For example, I think on June 12, 2019 when Mr. St.
20 Michael sent an e-mail to Customs asking about the whereabouts
21 of the container, that e-mail is not reflected on this chart,
22 correct?

23 A. That is correct.

24 Q. Okay. And looking specifically at maybe the sixth or
25 seventh row on 10/6/18 on WhatsApp that's described as a

1 creation of Peanut chat, do you see what I'm talking about?

2 A. Yes.

3 Q. And it lists Mr. Tita was not a member of the chat at
4 that time, correct?

5 A. My understanding that is correct based on what was shown
6 earlier.

7 Q. He got added to the chat on October 11, 2018, correct?

8 A. Added to that particular one, yes.

9 Q. Okay. And some of the items on this chart, not really
10 sure if they're related to the subject matter of this trial,
11 correct?

12 A. They're all related to the conspiracy.

13 Q. Okay. And that's a determination that you made, correct?

14 A. I created the chart.

15 Q. Okay. So in your opinion they're all related?

16 A. Yes.

17 Q. Okay. Court's brief indulgence. Nothing further, Your
18 Honor.

19 **THE COURT:** All right, thank you. Mr. Basile,
20 anything?

21 **MR. BASILE:** No questions, Your Honor.

22 **THE COURT:** Okay. Any redirect?

23 **MR. MIHOK:** No thank you, Your Honor.

24 **THE COURT:** Okay, thank you very much. You can step
25 back down.

1 (Witness, excused.)

2 THE COURT: And ladies and gentlemen, I think I
3 need to have a little scheduling discussion with counsel so
4 I'm just going to ask you all to step back in the jury room
5 briefly.

6 (Jury exits at 4:19 p.m.)

7 THE COURT: You can be seated. So is the Government
8 still inclined to, subject to checking exhibits, inclined to
9 rest at this point?

10 MS. GAVIN: Yes, Your Honor.

11 THE COURT: Okay. So it's already 4:20. You would
12 like to do Judgment of Acquittal motion, but you're not ready
13 yet?

14 MR. IVEY: I am not.

15 THE COURT: Okay. And you're also going to be
16 consulting over the weekend presumably to figure out who, if
17 anyone, you're calling on Monday. But we have if you choose to
18 call him, Mr. St. Michael kind of on-call; is that right?

19 MS. GAVIN: We do. And we would ask if the defense
20 counsel could let us know, assume they don't call him, who
21 they are going to call on Monday.

22 THE COURT: Yes. I would assume that you would give
23 everybody a call.

24 MS. GAVIN: If we could do that today like we've
25 done with them.

1 **THE COURT:** Yes, notice of who it's going to be. Can
2 you -- do you have anybody definite at this point?

3 **MR. BENOWITZ:** Well Your Honor, on behalf of Mr.
4 Tita we disclosed -- at the beginning of the trial we
5 disclosed a witness list. Three of those witnesses I believe
6 we identified as character witnesses. Of course that depends
7 on whether or not Mr. Tita is going to testify. So as soon as
8 we know that answer we can let the Government know, but they
9 have the names of those character witnesses.

10 **THE COURT:** All right, three character witnesses and
11 of course possibly Mr. Tita.

12 **MR. BENOWITZ:** Yes.

13 **MR. BASILE:** And the same for Mr. Nji, Your Honor.

14 **THE COURT:** Those were also character witnesses?

15 **MR. BASILE:** Yes.

16 **MR. BENOWITZ:** There may be one fact witness but we
17 won't know that until probably Sunday, but as soon as we know
18 that we'll let the Government know.

19 **THE COURT:** Someone that was on somebody's witness
20 list?

21 **MR. BENOWITZ:** The Government certainly knows about
22 this witness, but we were not aware that they might
23 potentially be a witness until in the middle of the trial and
24 frankly, we haven't even interviewed the witness so we don't
25 know.

1 **MS. GAVIN:** We know about the witness?

2 **MR. BENOWITZ:** I can -- well, I can explain.

3 **THE COURT:** You guys talk afterwards. You guys talk.
4 Okay. And Mr. Ivey?

5 **MR. IVEY:** I have a couple of witnesses as well,
6 Your Honor. The couple that I gave the names to that you
7 mentioned and I sent an e-mail, I think.

8 **MS. GAVIN:** Character witnesses?

9 **MR. IVEY:** Yeah, basically. I think it was Wednesday
10 I sent that.

11 **MS. GAVIN:** But they're character witnesses?

12 **MR. IVEY:** Yeah, they'll talk about working with him
13 and that kind of thing.

14 **THE COURT:** Okay. All right, then in terms of
15 bringing the jury in on Monday, if we all meet at 9, how long
16 do you anticipate needing for your motions?

17 **MR. IVEY:** I would think we could be done by 9:30,
18 Your Honor.

19 **THE COURT:** That's kind of what I was thinking,
20 9:30. All right, so I'll tell the jury -- bring the jury back
21 in and you can tell them that you're resting. And so then
22 I'll tell them that in light of the particular scheduling that
23 the Government has just rested, that I have some matters to
24 discuss with counsel first thing Monday morning so we're
25 actually going to ask them to come in at 9:30 instead of 9 and

1 that I expect they may hear some additional evidence. And I'll
2 just leave it at that. Fair enough?

3 **MR. IVEY:** I'm sorry, Your Honor. I did forget I
4 know we talked about Mr. St. Michael. I don't think we talked
5 about Mr. Bangarie who is the subject of the 807 filing --

6 **THE COURT:** Yeah.

7 **MR. IVEY:** --you raised yesterday, I think. Our
8 anticipation is he'll assert the Fifth, but I don't know the
9 status of that yet. I know that they're going to assert the
10 Fifth, but that's all I know.

11 **THE COURT:** Okay. Mr. Bangarie -- Mr. Bangarie is
12 represented by counsel?

13 **MR. IVEY:** Oh, yes.

14 **THE COURT:** And I'm just not remembering who that--

15 **MS. GAVIN:** It's Pat Woodward.

16 **THE COURT:** You've been advised he's going to assert
17 the Fifth?

18 **MR. IVEY:** Mr. Benowitz.

19 **MR. BENOWITZ:** I spoke with Mr. Woodward and he said
20 he would assert the Fifth -- well, he would assert the Fifth
21 on his behalf.

22 **THE COURT:** Sure. And so will you still be
23 attempting to get in some statement by Mr. Bangarie and if so,
24 under what authority?

25 **MR. IVEY:** You mean if he -- if you grant his

1 motion, if you say that the privilege is applicable, yes.
2 That's the point of the 807 filing, so that he would be
3 unavailable under the Fifth Amendment assertion of his right
4 and he would therefore be unavailable to us, but that we could
5 pursue him because of the circumstances of the statement that
6 we're after which is a proffer statement to the Government
7 that give it reliability and I think addresses the issues that
8 unavailable statements typically need to have. It's not a
9 prior transcript, but, you know, it was given to Government
10 officials under the penalty of a false statement and it was
11 accepted by the Government apparently because -- if I could
12 take this off for a moment, this was -- the proffer statement
13 was made before the plea. And apparently the Government was
14 aware of the statement that was made, concluded that it was
15 acceptable and moved forward with the plea and presented it to
16 the Court, the overall package of acceptance of
17 responsibility. And he was given three points for his plea.

18 So our argument is going to be and I know the Court
19 requested some briefing on it and I thought I was going to
20 have the weekend to do that, but I will get it to the Court I
21 guess Monday morning.

22 **MS. GAVIN:** If I could just correct the record here,
23 the Government never accepted anything. It's not a
24 cooperation agreement that Mr. Bangarie entered into.

25 **THE COURT:** Right.

1 **MS. GAVIN:** And I haven't had a chance to research
2 this issue, but the Government would object to any effort to
3 introduce this evidence.

4 **THE COURT:** I assumed you would.

5 **MS. GAVIN:** Yes.

6 **MR. IVEY:** And I don't think it has to be a
7 cooperation agreement for --

8 **THE COURT:** I'm taking no opinion at this point. I
9 just will say I will need to see some persuasive case law that
10 if he chooses which you've been told he is. I mean, I don't
11 know that we need to go through this exercise if his counsel's
12 representing that he's going to assert his Fifth Amendment.
13 He's pled guilty, but not been --

14 **MS. GAVIN:** He's not been sentenced yet.

15 **THE COURT:** He still has his Fifth Amendment right
16 as far as I know, you can tell me differently -- I don't know
17 that that's going to make a proffer statement to the
18 Government admissible, but again, you're going to research it
19 and give it to me first thing Monday. Or over the weekend, if
20 you find it before that, go ahead and send it to my chambers'
21 e-mail box because I have access to that.

22 All right, we're making some progress. All right,
23 let's bring the jury back in. Thank you.

24 **(Jury entered the courtroom at 4:28 p.m.)**

25 **THE COURT:** You can all be seated. Ladies and

1 gentlemen, I think the Government has come to a certain point.

2 **MS. GAVIN:** Subject to checking the exhibits, the
3 Government rests.

4 **THE COURT:** Okay. So ladies and gentlemen, the
5 Government subject to checking its exhibits has presented all
6 the evidence that it intends to produce at this point. So
7 Monday we'll be moving into anything else that defendants may
8 or may not choose to present. But what that does mean is just
9 that I'm going to need a little bit of time Monday morning for
10 a discussion on a point of law with counsel. So instead of
11 coming at 9 -- we're going to come at 9, but if you could come
12 at 9:30 and we can have our discussion and then move forward,
13 move forward from there.

14 So again, case is not over. Please, again, no
15 research, no discussion, keep an open mind. There's more to
16 go, but thank you very much for your patience and attention so
17 far and we'll see you at 9:30 on Monday morning. Have a good
18 weekend.

19 **(Jury excused at 4:29 p.m.)**

20 **THE COURT:** And you can sit down, but in regard to
21 the Motion for Judgment of Acquittal, also if there are any
22 particular cases that you want to rely on, any hint you want
23 to give me, just -- I'm not telling you to write out a full
24 motion or anything like that unless it's something you want
25 to, but if there are cases beyond *Bishop* and the Fourth

1 Circuit or whatever there's something you want me to be sure
2 to look at before Monday morning on either side, just again,
3 if you would just send the case reference to chambers. Okay?

4 **MR. IVEY:** Yes, Your Honor.

5 **THE COURT:** Anything else?

6 **MR. BENOWITZ:** Your Honor, I submitted some case
7 law, I think one case maybe a day or two ago regarding the
8 notes issue for Agent Matney. I might want to make a brief
9 argument on Monday morning about that.

10 **THE COURT:** Why not right now?

11 **MR. BENOWITZ:** That's fine.

12 **THE COURT:** Because I -- yeah, I read what you
13 submitted. I didn't, frankly, see how it helped.

14 **MR. BENOWITZ:** That's fine, but I wanted to at least
15 make my record. So the way I thought -- and I agree, the
16 Government made the assertion that most of the case law goes
17 against my position which I think is correct. The case that I
18 submitted I think does distinguish though because in that --
19 the Court in that situation said or the Fourth Circuit said if
20 there's an assertion that the notes are a verbatim
21 transcription, it becomes -- that's a different story. And I
22 think that's what Agent Matney was getting at.

23 When Mr. Ivey was questioning Agent Matney about the
24 way she took notes, Mr. Ivey said "Well, you'd agree that
25 video or audio is more accurate" and Agent Matney disputed

1 that and said "Well" -- basically said it's different, but the
2 way I take notes is -- the implication being that her notes
3 were extremely accurate.

4 So I think that's why I submitted that decision to
5 the Court because I think that was the point that the Fourth
6 Circuit was making there.

7 **THE COURT:** Okay. I don't know if I brought those in
8 with me. I don't -- first of all, I don't recall the testimony
9 being that it was verbatim. In fact, I think as I understood
10 it that was part of the cross-examination that if you did have
11 a video or audio, then of course you would have it verbatim,
12 this is not. This is notes that are then turned into her
13 report. Am I missing something?

14 **MR. BENOWITZ:** And that was the line of questioning,
15 but Agent Matney disputed that, that's why I'm making that
16 argument.

17 **THE COURT:** I think she -- yes, well she thought
18 that she could put together an accurate report based on her --

19 **MR. BENOWITZ:** I think what she was saying is her
20 notes were so accurate that they were essentially like a video
21 or audio, that they were verbatim. And that's why -- because
22 Mr. Ivey was saying as well, don't you put quotes to sort of
23 separate your notes versus a quote and she disputed that, as
24 well.

25 **THE COURT:** Okay. Does the Government want to be

1 heard?

2 **MS. GAVIN:** Your Honor, the Government believes that
3 the notes are not subject to discovery. The agent's-- pursuant
4 to well established case law, the agent's reports have been
5 provided. The agent testified that her notes she thinks are
6 accurate in terms of notes of what the interview involved, but
7 they're not verbatim. And I can represent to the Court that
8 I've reviewed the notes and they're notes and there are no
9 discrepancies of any import or frankly, any discrepancies at
10 all that I can see between the notes and then what's put into
11 the report in full sentences and things like that.

12 As I said, I can cite the Court to many cases that
13 hold, especially in the Fourth Circuit that the notes are not
14 discoverable.

15 **THE COURT:** I think you cited the *Hinton* case which
16 was published and then there was a -- I didn't bring it in
17 with me, but there was a more recent unpublished opinion that
18 essentially said that's been the law in the Fourth Circuit for
19 some time.

20 **MS. GAVIN:** Yes. There's the *Fuller* case, the
21 *Roseboro*. I mean, I have a variety of cases I'm happy to --
22 if the Court needs to see them -- *Smith* from 2004 citing
23 *Hinton*. Most of these are unpublished cases, but obviously
24 the--

25 **THE COURT:** I will just say I did not -- I

1 understand Mr. Benowitz was recognizing the case law which I
2 appreciate in trying to distinguish it based on what the agent
3 said about her notes. I think the representation that she
4 thought that the notes were accurate, sufficient to base her
5 report on which is what she did, doesn't transform these rough
6 notes into something that would be produceable under Fourth
7 Circuit case law. So I'm denying the request for the agent's
8 notes.

9 I also do appreciate that the Government has
10 reviewed the notes themselves and I'm sure if they found some
11 inconsistency that would constitute *Brady* or *Giglio* or
12 something like that they would have turned it over; is that
13 correct?

14 **MS. GAVIN:** Yes, Your Honor.

15 **THE COURT:** All right, anything else?

16 **MR. BENOWITZ:** No, Your Honor.

17 **MS. GAVIN:** Nothing further, Your Honor.

18 **THE COURT:** Okay, then I will see you all at 9:00 on
19 Monday. I'm not representing the accuracy or predictability of
20 any of this. I've heard there's another totally unrelated
21 criminal trial which is scheduled to start on Monday which
22 involves marijuana and there has been some discussion of the
23 possibility of there being a protest of some kind outside the
24 courthouse, I believe. That is all I know about it. I have no
25 idea whether that will actually happen, but you all might want

1 to just allow a little extra time and not be surprised if
2 there are folks. That's all I can say.

3 I take it back, I did bring one of the unpublished
4 opinions in here. It was *United States vs. Borda* at 178 F.3d
5 1286 which relied on *Hinton*. Thank you all. Appreciate
6 everybody's patience and I will see you on Monday morning at
7 9:00. Thank you all.

8 **(Proceeding concluded at 4:37 p.m.)**
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1 CERTIFICATE OF OFFICIAL REPORTER

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3
4 I, Nadine M. Bachmann, Certified Realtime Reporter
5 and Registered Merit Reporter, in and for the United States
6 District Court for the District of Maryland, do hereby
7 certify, pursuant to 28 U.S.C. § 753, that the foregoing is a
8 true and correct transcript of the stenographically-reported
9 proceedings held in the above-entitled matter and that the
10 transcript page format is in conformance with the regulations
11 of the Judicial Conference of the United States.

12
13 Dated this 22nd day of June, 2022.

14
15 -S-

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17 _____
18 NADINE M. BACHMANN, CRR, RMR
19 FEDERAL OFFICIAL COURT REPORTER
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